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[redacted]

IN THE

SUPREME COURT OF THE UNITED STATES

[redacted] TERM, [redacted] 1924

No. [redacted]112

JOHN G. MORRISON, JR., ET AL., APPELLANTS,

vs.

HUBERT WORK, SECRETARY OF THE INTERIOR, CHARLES H. BURKE, COMMISSIONER OF INDIAN AFFAIRS, WILLIAM SPRY, COMMISSIONER OF THE GENERAL LAND OFFICE, ET AL.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

[redacted]

(29,729)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1923

No. 419

JOHN G. MORRISON, JR., ET AL., APPELLANTS,

vs.

HUBERT WORK, SECRETARY OF THE INTERIOR; CHARLES H. BURKE, COMMISSIONER OF INDIAN AFFAIRS; WILLIAM SPRY, COMMISSIONER OF THE GENERAL LAND OFFICE, ET AL.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

INDEX

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOVEMBER 2, 1923

Court of Appeals of the District of Columbia.

No. 3875.

JOHN G. MORRISON, JR., et al., Appellants,

vs.

ALBERT BACON FALL, &c., et al.

a Supreme Court of the District of Columbia.

In Equity.

No. 40034.

JOHN G. MORRISON, JR., et al., Plaintiffs,

vs.

ALBERT BACON FALL, Secretary of the Interior; CHARLES H. BURKE, Commissioner of Indian Affairs; William Spry, Commissioner of the General Land Office, and Andrew W. Mellon, Secretary of the Treasury, Defendants.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times heerinafter mentioned, the following papers were filed and proceedings had, in the above entitled cause, to wit:

1 In the Supreme Court of the District of Columbia.

Equity. No. 40034.

JOHN G. MORRISON, JR., et al., Plaintiffs,

vs.

ALBERT BACON FALL, Secretary of the Interior; CHARLES H. BURKE, Commissioner of Indian Affairs; William Spry, Commissioner of the General Land Office, and Andrew W. Mellon, Secretary of the Treasury, Defendants.

Memorandum.

April 22, 1922.—Original bill for injunction, filed.

Motion of Albert B. Fall et al. to Dismiss.

Filed April 27, 1922.

* * * * * * *

Come now Albert B. Fall, Secretary of the Interior, Charles H. Burke, Commissioner of Indian Affairs, and William Spry, Commissioner of the General Land Office by their attorneys, and move to dismiss the bill of complaint herein filed on the grounds:

1. That there is a defect of parties complainant.
2. That there is a defect of parties defendant in that the State of Minnesota is an indispensable party to so much of the suit as involves swamp and overflowed lands.
3. That the suit is essentially an action against the United
2 States, an indispensable party hereto, which has not consented to be sued in this behalf.
4. That the bill does not set out any facts sufficient to entitle the complainant to the relief prayed for or to any relief.
5. That the court is without jurisdiction over the subject matter of the suit.

EDWIN S. BOOTH,
Solicitor;
C. EDWARD WRIGHT,
First Assistant Attorney,
Attorneys for Defendants.

To Webster Ballinger, Esq., attorney for plaintiff:

Take notice that the above motion to dismiss will be for hearing on May 5 at 10 o'clock or as soon after as the same may be reached.

C. EDWARD WRIGHT,
Attorney for Defendants.

Memorandum.

May 11, 1922.—Motion to dismiss, identical as to the grounds assigned in the above motion, was filed by defendant Andrew W. Mellon.

3 *Memorandum of Justice Hoehling.*

Filed June 6, 1922.

* * * * * * *

This is a bill filed by John G. Morrison, Jr., describing himself as a citizen of the United States, a resident of the State of Minnesota, duly enrolled as a member of the former White Earth Band, and was allotted land on the White Earth Reservation as such; that he is a member of that class of persons described as "all the Chippewa Indians in the State of Minnesota," in certain agreements with the United States, and therein declared to be the sole owners and beneficiaries of the net funds received from the sale and disposition of certain lands, and timber thereon, ceded to the United State, in trust; and plaintiff brings the suit in his own right as well as for and on behalf of all others persons included within the class named in said agreements and similarly situated.

The bill prays for injunctive relief against the Secretary of the Interior, Commissioner of the General Land Office, Commissioner of Indian Affairs, and the Secretary of the Treasury, concerning divers subjects-matter mentioned in the bill; and which may be briefly summarized thus:

By an act approved January 14, 1889, (25 Stats. 642), authority was given to negotiate with the different Bands of Chippewa Indians of Minnesota for the complete cession and relinquishment of their title and interest of all the reservations of said Indians in said State except the White Earth and Red Lake and to so much of those Two reservations as is not required to fill the allotments required by that and existing acts and which shall not have been reserved
4 for such purposes; said act further provided for disposition of the ceded lands and the timber thereon and fixed a minimum price to be received, etc. Out of the reserved lands, allotments were to be made to the Indians residing on the Red Lake Indian Reservation, and those who did not desire to take their allotments were to be removed to and allotted on the reserved portions of the White Earth Reservation, etc. The act provided for the survey of the lands and classification into forty-acre lots—those on which there was standing or growing pine timber to be classified as pine lands and other lands to be classified as agricultural lands; pine timber not to be estimated as less than $3. per thousand feet. The act also provided for sales at public auction for cash in forty-acre parcels of the pine lands at not less than their appraised value, etc.; agricultural lands to be sold to actual settlers under the provisions of the homestead law, at the rate of $1.25 per acre, payable in five

equal annual payments before patent. The act further provided that all moneys accruing from the disposal of said lands, after deducting certain enumerated expenses, should be placed in the Treasury of the United States to the credit of all the Chippewa Indians of Minnesota as a permanent fund, to draw interest at the rate of 5% per annum for the period of 50 years after the allotments provided in the act shall have been made, the interest and permanent fund to be expended for the benefit of the Indians, as follows:

One-half of the interest, except as otherwise provided to be paid annually in cash in equal shares to the heads of families and orphan minors for their use; one-quarter of said interest, during the
5 same period and with like exception, to be paid annually in cash in equal shares *per capita* to all other classes of said Indians; and the remaining one-quarter of said interest, during said period of 50 years, to be devoted exclusively under the direction of the Secretary of the Interior to the establishment and maintenance of a system of free schools among said Indians, in their midst and for their benefit; and, at the expiration of said fifty years, the permanent fund to be divided and paid to all of said Chippewa Indians and their issue then alive, in cash, in equal shares.

It is charged that, notwithstanding the terms and provisions of the act aforesaid, and of the agreements made and actions taken and had in pursuance thereof, the Commissioner of the General Land Office and the Secretary of the Interior illegally caused about 900,000 acres of the ceded lands, much of which were covered with pine timber, to be classified as "swamp and overflowed lands," and, likewise without authority of law, have issued patents to the State of Minnesota covering approximately 600,000 acres of said lands, without consideration to the Indians, and that, unless restrained, said public officials will issue patents to the remaining lands so illegally classified, as above "thereby causing irreparable injury to plaintiff and all other members of said class similarly situated."

It is further alleged that, notwithstanding the provision of the act aforesaid as to "agricultural lands," Congress, by an act approved May 17, 1900, (31 Stats. 179,) known as the Free Homestead Act, provided for homestead patents for agricultural public lands acquired prior to the passage of that act by treaty or agreement from the various Indian Tribes, based upon residence and the payment of local Land Office fees, without other or further charge; said act further providing that the moneys so realized, which otherwise would belong to any Indian Tribe, shall be paid to such
6 Indian Tribe by the United States, appropriate provision being made in the act for the payment. It is alleged that none of the lands ceded under the act or agreement of 1899, *supra,* were, in 1900, "public lands," nor have they since become such, and that said act of 1900 has no application to said lands, but that notwithstanding, the Commissioner of the General Land Office has illegally applied the provisions of said act of 1900 to said ceded lands and that several thousand patents have been issued to homestead entry on the ceded lands without payment therefor being made into the trust fund of the Indians; and that a large number of patent applications

by homesteaders on said ceded lands are now pending and will be approved by the Commissioner unless restrained, and that patents therefor will issue without the payment of the $1.25 per acre being first made to the Indians, as so required, as above; "thereby causing plaintiff and all other members of said class further irreparable loss and injury."

It is further charged that while, under the agreement of 1889, *supra*, the timber on "pine lands" was to be appraised at not less than $3. per thousand feet and the land and standing timber thereon were to be sold at public auction, in no event for less than their appraised value, in the disposition of pine lands, under the administration of the Commissioner of the General Land Office, frauds were practiced by the under estimation of timber by Government appraisers in the interest of lumber companies and that those frauds resulted in the Indians receiving less than eight cents per thousand feet for much of the timber sold prior to 1898; that the frauds
7 became so notorious that they resulted in an investigation by officers of the Department and a Select Committee of Congress, as a result of which investigation, and for the protection of the Indians, there was passed the act of June 27, 1902, (32 Stats. 400,) which changed the method of disposing of the timber, so that instead of being sold as standing timber, as theretofore provided, it was cut into logs and sold on bank scale, the land remaining undisposed of. It is further alleged that by the act of May 23, 1908, (35 Stats. 272,) about 400,000 acres of the best "pine lands" were included in the "Minnesota National Forest Reserve," section 4 of which act contains certain provisions in respect of opening classified timber land to homestead settlements, as soon as the timber is removed therefrom, at the rate of $1.25 per acre, and section 8 whereof provides that nothing in the act should bind the United States to purchase any of the land in the reservations excluded from the Reserve created by this act, or to dispose of said land, except as provided by the act of January 14, 1889. Plaintiff further alleges that the Commissioner of the General Land Office, ignoring the provisions of the act of 1908, and the agreement of 1889, refused to offer the cut-over pine lands for sale at public auction and has exposed said land to homestead entry and has permitted several thousand homestead entries to be made and is executing patents to somestead entrymen without requiring the payment of $1.25 per acre, and that the said Commissioner has not caused to be paid into the trust fund of the Indians the sum of $1.25 per acre for the lands so patented. Plaintiff further alleges that the cut-over pine land will bring in the open market from $5. to $250. per acre at public
8 auction and that the unlawful acts of the said Commissioners are causing plaintiff and all other members of the class similarly situated irreparable loss and injury and that the said Commissioner will continue to illegally dispose of the lands under homestead laws unless restrained.

It is further alleged that, in 1889, and long prior thereto, the United States recognized the members of the different Bands of Chippewa Indians occupying reservations in Minnesota as the own-

ers of the possessory title of the respective reservations occupied by them, except the Red Lake Reservation which embraced over 3,000,000 acres of lands and was occupied by about 1,200 Chippewa Indians, members of the Red Lake Band; that, as to the Red Lake Reservation, the United States recognized the possessory title as being in all of the Chippewa Indians of Minnesota and that said recognition was declared in said act of January 14, 1889, which act provided, as to said Red Lake Reservation, that the cession was to be deemed sufficient if assented to in writing by two-thirds of the male adults over eighteen years of age of all the Chippewa Indians in Minnesota, and that there was to be reserved from said cession of lands on the Red Lake Reservation only sufficient land to make allotments under the general allotment act to the then members of the Red Lake Band, and that said lands were to be reserved for no other purpose; that, on account of the character of the land on the Red Lake Reservation, there were reserved approximately 700 acres of land on that reservation to enable the 1,200 members of that Band to select land suitable for allotment purposes.

It is further alleged that, notwithstanding the fact that the surveys were completed of lands within the reserved portion of
9 the Red Lake Reservation and that 33 years have now elapsed, not an allotment has been made to any member of said former Band. It is further alleged that, by an act approved June 27, 1902, it was provided that the Secretary of the Interior, as speedily as possible, shall proceed to complete the allotments to the members of said Red Lake Band, and that those allotments shall be completed before opening the agricultural lands to settlement.

It is further alleged that the agricultural lands were opened to settlement prior to 1908, and that the members of the former Red Lake Band have been endeavoring, for the past 30 years, to obtain their allotments in severalty, to which they have been entitled, as above; that many of those entitled to allotments have died and that their rights have been extinguished by failure to obtain the same during their lives, thus depriving them and their children of property intended to be secured to them; that said reservation has been held as a closed reservation for the past 33 years, excluding therefrom all forms of development and improvement and thereby denying to the former members of the Band citizenship in the State and Union, free public schools, churches, highways, association with white settlers and owners, and all those essential elements of civilization necessary to their proper development and progress; that said refusal to permit the members of said Band to take their allotments and to allot those who failed so to do, has prevented the fifty-year trust period from commencing to run, and has prevented the disposition of the reserved lands as provided by said agreement of
1889, and has caused the maintenance and continuance of
10 an agency, the expense of maintaining which is being illegally paid out of the trust funds belonging to all of the Chippewa Indians of Minnesota, amounting annually to approximately $50,000., and, in addition, has resulted in the unnecessary and illegal expenditure of more than $2,500,000. of money belonging

to the trust funds of all the Chippewa Indians of Minnesota, for the care and support of said Red Lake Indians who, otherwise, would have been self-sustaining, thus reducing the principal trust fund of all the Chippewa Indians of Minnesota and, likewise, reducing the school fund for the education of the Chippewa Indian children and which plaintiff and all other members of said class similarly situated have an interest for the benefit of their children, and that, unless restrained, the Secretary of the Interior and Commissioner of Indian Affairs will continue to refuse to permit the said Red Lake Indians to take their allotments in severalty, to the great and irreparable injury of plaintiff and all other members of said class similarly situated.

Plaintiff further alleges that by an act of Congress of February 20, 1904, (33 Stats. 48,) it was declared that the Indians of the Red Lake Reservation should possess their diminished reservation independent of all other bands of the Chippewa Tribe and further declared that nothing in the act should deprive said Red Lake Indians of any benefits to which they were entitled under the agreement of 1889. Plaintiff alleges that the lands referred to in said act of 1904 were not then nor have they been at any time, the property of the United States, but that said lands passed to the United States under the agreement of 1889, burdened with and subject to the con-
11 ditions thereof, and that it was not within the power of Congress to confer upon said Red Lake Indians exclusive ownership of the lands within that reservation which had been reserved solely for the purpose of permitting the Red Lake Indians to select suitable allotments therefrom, the residue to pass to the United States under the terms of the agreement, *supra,* and that said act of 1904, in so far as it undertook to change the terms and conditions of the agreement of 1889, to the injury and loss of plaintiff and all other members of said class similarly situated, is unconstitutional and void.

Plaintiff further alleges that by an act approved May 18, 1916, (39 Stats. 137,) the Red Lake Indian Forest was established out of a part of the lands within the limits of the diminished Red Lake Indian Reservation, and which lands were reserved upon the terms and for the purposes hereinbefore stated: that by said act provision was made for the sale and disposition of timber within said Red Lake Indian Forest, and deposit of the net proceeds in the Treasury of the United States to the credit of the Red Lake Indians, the same to bear interest at the rate of 4 per centum per annum, the interest to be used by the Secretary of the Interior for the exclusive benefit of said Red Lake Indians; that by the agreement of 1889, only lands within the reserved portion of the Red Lake Reservation, suitable for agricultural and grazing purposes, were subject to allotment to the members of the former Red Lake Band and that none of the timbered lands included in said Red Lake Indian Forest were subject to allotment, and that said timbered lands, by the provisions of the agreement of 1889, were to pass to the United
12 States upon the same terms and conditions as all other lands lands ceded under that agreement, and for the credit of all

the Chippewa Indians in the State of Minnesota, etc. Plaintiff further alleges that the net proceeds received from the timber cut from said Red Lake Indian Forest amount approximately to $500,000., which funds have been deposited in the Treasury of the United States to the credit of the Red Lake Band and not to the credit of all the Chippewa Indians in Minnesota, as provided in the agreement of 1889, and that the Secretary of the Interior is now using the interest accruing annually from said fund for the exclusive use and benefit of the members of said former Red Lake Band, and that the action aforesaid constitutes an illegal diversion of said funds from the agreement of 1889, and that said act of 1916, in so far as it directed the illegal diversion of said funds, is unconstitutional and void, in that it takes the property in which plaintiff and all other members of said class similarly situated have a vested interest without due process of law and without just compensation; and that the Secretary of the Treasury, unless required by mandatory injunction, will continue to retain said funds to the credit of the Red Lake Band, and that the Secretary of the Interior, unless restrained, will continue to deposit in the Treasury of the United States, to the credit of said Red Lake Band, the net proceeds received from the sales of said timber, and will continue to dispose of the interest annually accruing therefrom exclusively for the use and benefit of the members of said Red Lake Band, all to the great and irreparable loss of plaintiff and all other members of said class similarly situated.

13 Plaintiff further represents that for many years prior to 1889 the United States maintained agencies among the Chippewa Indians of Minnesota; that by section 7 of the agreement mentioned, it was provided that all moneys accruing from the disposal of lands ceded to the United States thereunder, after deducting divers enumerated expenses, should be placed in the Treasury of the United States to the credit of all the Chippewa Indians in the State of Minnesota as a permanent fund, to draw interest at the rate of 5 per centum per annum, payable annually for the period of 50 years, one-quarter whereof was to be devoted exclusively to the establishment and maintenance of a system of free schools among said Indians, in their midst and for their benefit, and that at the expiration of said 50 years, the permanent fund was to be divided and paid to all the Chippewa Indians and their issue then living, in cash, in equal shares. Plaintiff alleges that the interest now accruing annually on said principal fund amounts to about $240,000, one-quarter whereof, under the agreement aforesaid, is to be devoted exclusively for the establishment and maintenance of free schools amongst the Indians; that there are more than 4,000 Chippewa Indian children of school age and that if said school fund was divided equally between said children, each child would be entitled to less than $15; that all of the Chippewa Indians of Minnesota, except those residing on the Red Lake Reservation who have not been allotted and numbering less than 1,500, are citizens of the United States, and of the State of Minnesota, the great majority of whom are tax payers; that of more than 4,000 Indian children of school age, approximately 3,500 reside in established public school districts of the State, having ample school

facilities for all children residing therein; that the State of
14 Minnesota maintains a public school system of high standard and by its laws the parents of every Indian child within the State is required, under heavy penalty, to see to it that the children of school age are in regular school attendance during the school term; that the Commissioner of Indian Affairs, with the approval of the Secretary of the Interior, has entered into certain contracts with mission boarding schools in Minnesota for the education of divers Indian children, and is paying out of the school funds some $25,000 or five-twelfths of the entire school fund available for the education of all Chippewa children; that a large percentage of said children reside in districts which have ample accommodations for public school education; that said mission boarding schools form no part of a system of free schools, as authorized by the agreement, *supra;* that the expenditure of said school funds for the education of said children in the mission schools is without authority of law; and that the remaining $35,000 of said school fund is inadequate to provide school facilities for those children who are without public school facilities, and deprives the Indian children not embraced within the contracts with the mission schools of any part of said school fund; that the Commissioner of Indian Affairs, unless restrained, will continue to pay to the mission schools the amount provided for in said contracts and will enter into similar illegal contracts with the said mission schools at the commencement of the next school year; and that the Secretary of the Interior, unless restrained, will approve such illegal contracts, to the great and irreparable loss and injury of plaintiff and all other members of the class similarly situated.

15 Plaintiff further alleges that by an act of Congress, approved in 1922, the Secretary of the Interior is authorized to withdraw, in his discretion, from the Treasury of the United States, so much of the sum of $46,570, as may be necessary, from the principal sum on deposit to the credit of the Chippewa Indians in the State of Minnesota, arising under section 7 of said act of 1889, and to expend the same for the payment of tuition of Chippewa Indian children enrolled in the public schools of the State of Minnesota, provided that the Secretary of the Interior may make payments therefrom of such amounts as he deems proper and just in aid of public schools of Minnesota, which have enrolled Chippewa Indian children therein during the fiscal year 1922, and in excess of the rate of compensation fixed in any existing contracts with public school districts where such rate is inadequate.

That section 7 of the act of 1889, *supra,* provides that Congress in its discretion, during said period of 50 years, may appropriate, from time to time, for the purpose of promoting civilization and self-support among said Indians, a portion of said principal fund, not exceeding 5 per centum thereof.

Plaintiff alleges that the aforesaid provision of the act of 1889 was understood by the Indians as applicable, in the matter of encroachment upon the principal fund, only in the event of failure of crops or other unforeseen misfortune which might befall the Indians; and,

the plaintiff alleges that the United States is bound by the interpretation placed upon said proviso by its own officers, and which,
16 so plaintiff alleges, was explained to the Indians, and induced the latter to enter into the agreement. Plaintiff further alleges that the public schools of Minnesota which the Chippewa Indian children are attending, and for which the appropriation is to be used in the payment of tuition, are a part of the free public school system of that State, and that, under the laws of Minnesota, every Indian child residing in a public school district in the State is entitled to admission to the public schools without any cost, and that the parent of any such child is required, under penalty, to see to it that the child regularly attends the public schools. Plaintiff alleges that the above appropriation of $46,570 is a pure gratuity to the public school system of Minnesota out of the trust fund of the Indians, and in violation of the terms of the agreement, without any additional benefit or advantage to any Indian children, etc. The plaintiff alleges that the appropriation is in violation of the terms and provisions of the trust under which the funds are held and is unconstitutional and void, but that the Secretary of the Interior, unless restrained, will withdraw from the principal trust fund said sum of $46,570 and use the same for the payment of tuition for certain Indian children attending certain public schools in Minnesota, to the great and irreparable loss and injury of plaintiff and all other members of said class similarly situated.

Plaintiff further alleges that an appropriation act of 1922 authorized the Secretary of the Interior to withdraw from said principal trust fund the sum of $42,500 and to use the same for general agency purposes during the fiscal year commencing July 1, 1922, and
17 it is asserted that, for the same reasons above stated, in connection with the item contained in the act of 1921, the appropriation is unconstitutional and void, but the Secretary of the Interior, unless restrained, will so withdraw and expend said sum of $42,500 for said general agency purposes, to the great and irreparable injury of plaintiff and all other members of said class similarly situated. Plaintiff further represents that said Indians have been complaining for a long time against the continuation of a part of the acts above referred to and many other- of a similar nature, and that the Indians allotted on the White Earth Reservation, failing to obtain relief from officers of the Department, filed protests with other officers of the United States, and that thereupon the Commissioner of Indian Affairs prepared an order for the signature of the President of the United States, directing the removal of the agency at White Earth to the town of Cass Lake, Minnesota, and represented to the President that the order was necessary in the interest of economy, of the Indians, and of the public, and that the President, so believing, signed the order.

Plaintiff further alleges that the agency at White Earth has been maintained pursuant to law for more than 50 years; that there are buildings constructed there out of the funds of the Indians and public moneys and which buildings have been used for agency purposes and for housing agency employees; that there are other valu-

able buildings there that have been used for schools, hospitals and other purposes, which cost in excess of $300,000 and are of the value of $200,000; that in said White Earth Agency there have been kept the records pertaining to the allotment and
18 blood status of more than 7,000 of the 12,000 Chippewa Indians of Minnesota; that it is necessary to examine those records in connection with the sale and disposition of allotted land on the White Earth Reservation, upon which approximately 7,000 Indians were allotted; that said records were compiled at the expense of the Indians; that the town of Cass Lake is about 70 miles from the White Earth Reservation; that only a comparatively few Indians reside or were allotted lands within the vicinity of Cass Lake; that from White Earth to Cass Lake by railroad is a distance of about 130 miles, with no direct line, necessitating transfer at intersections of railroads and long delays; that there are no public buildings constructed out of Indian money at the town of Cass Lake that can be used for agency purposes or for the accommodation of agency employees; that if said agency be removed, it will be necessary to maintain caretakers at White Earth to look after the vacant buildings, there being no authority at law for their disposition, and that the money so expended would be practically sufficient to maintain the agency and records at White Earth; that the location of the agency at Cass Lake will confer no benefit upon the public and the Indians, but will result in great hardship and heavy expense upon the Indians allotted upon the White Earth Reservation and upon the great majority of Indians within the jurisdiction of said agency, would likewise cause inconvenience and heavy expense to the general public having business at said agency; that the Commissioner of Indian Affairs has instructed the agent at White Earth to make arrangements for the leasing of buildings at Cass Lake for the use of the agency and its employees, and the
19 installation of vaults and other improvements, necessitating the expenditure of approximately $25,000; that the Commissioner of Indian Affairs and the Secretary of the Interior, unless restrained, will pay the costs of the removal of the agency, of renting quarters and all improvements in connection therewith, and the cost of maintenance thereof, out of the trust funds of the Indians, in which plaintiff and all other members of said class similarly situated have an interest, this without authority of law, and to the great and irreparable injury of plaintiff and all other members of said class similarly situated.

Finally, plaintiff alleges that he, and all other members of said class similarly situated, for and in whose behalf the suit is filed, have no plain, complete and adequate remedy at law.

The prayers of the bill, based upon the several subjects-matter hereinabove summarized, may be stated, in condensed form, thus:

(*b*) Injunction to present the issuance of further patents to the above described "swamp or overflowed lands," and to require to be effaced from maps and records of survey all designations or notations classifying or describing any of said lands as "swamp or overflowed."

(*c*) Injunction to prevent the issuance of further patents to any of the lands classified as "agricultural," until the entrymen have fully paid the purchase price of $1.25 per acre, and deposited to the credit of the Chippewa trust fund.

(*d*) Injunction to prevent the issuance of further patents for "pine lands" to settlers under the homestead laws at $1.25 per acre; and that all of the unpatented "pine lands," from which the timber has been removed, be required to be offered for sale at public auction to the highest bidder, under proper regulations.

20 (*e*) Injunction to prevent withdrawing or expending funds arising under the act of May 18, 1916, from sale of timber from the Red Lake Forest; and that all of said funds to the credit of the Red Lake Band be required to be transferred to the credit of the trust fund for the benefit of all the Chippewa Indians in the State of Minnesota. Further, that it be required that all lands on the Red Lake Indian Reservation be opened for allotment purposes, and that any Indian entitled to an allotment be permitted to select the same, and to receive patent therefor.

(*f*) Injunction to prevent withdrawals from school funds of the Chippewa Indians of Minnesota for the payment of tuition and support of any child in the mission boarding schools, *supra*, or for payment of tuition of any child attending the public schools in Minnesota.

(*g*) Injunction to prevent withdrawals from trust fund of the Chippewa Indians in Minnesota for the payment of expenses of the agencies maintained among the Chippewa Indians in Minnesota by the United States.

(*h*) Injunction to prevent use or expenditure of any of the funds standing to the credit of the Chippewa Indians in Minnesota, for the expense of removal of the agency from White Earth to Cass Lake, Minnesota, or for the maintenance of said agency at Cass Lake, or for the rental or alteration of any building at Cass Lake for agency purposes, or for the removal of the records now at White Earth to Cass Lake.

(*i*) For general relief.

To the foregoing bill of complaint, motions to dismiss have been interposed on behalf of the respective parties, based upon the grounds:

(1) That there is a defect of parties complainant.

(2) That there is a defect of parties defendant, in that the State of Minnesota is an indispensable party to so much of the suit as involves swamp and overflowed lands.

(3) That the suit is essentially an action against the United States, an indispensable party herein, which has not consented to be sued in this behalf.

(4) That the bill does not set forth any facts sufficient to entitle the complainant to the relief prayed, or to any relief.

(5) That the court is without jurisdiction over the subject-matter of the suit.

21 The above motions to dismiss were orally argued by counsel, and typewritten memorandum of authorities submitted

in support of the respective and opposed contentions; all of which arguments and authorities have been carefully considered.

The Court, in its consideration of the interesting as well — important questions involved in the suit, has been at some pains to analyze the averments of the bill and the prayers thereof; and if the Court, in its disposition of the motion, does not discuss in detail the several subjects-matter embraced in the suit, counsel may be assured, nevertheless, that each thereof has been separately and carefully considered.

Without here undertaking to announce its conclusions in the form of an opinion supported by citation of authorities, and this for the reason that this decision is that of the trial court merely, and not a court of review or appeal, the Court has reached its conclusions herein which may be briefly stated thus:

That the plaintiff has no such interest as entitled him to maintain the bill; that the State of Minnesota is an indispensable party to the suit so far as concerns the swamp and overflowed lands in that State, and, of course, the State cannot properly be made such party defendant to the bill; that plaintiff is not representative of the rights, titles, moneys and properties of the Red Lake Indians, and which latter cannot be litigated and judicially determined in their absence; that the bill embraces divers questions political in their nature, in respect of which relief must be obtained, if at all, from Congress. Furthermore, this suit, in effect, is one
22 against the United States, seeking to control the disposition of lands and of the timber thereon, and for an account of the proceeds of sales thereof, heretofore conveyed by the Indians to the United States, under the act of January 14, 1889; and the bill further seeks to transfer to the courts the detail of the administrative control of the Government over the properties and moneys which are embraced in the suit. And, finally, the United States, which is the substantial and real party in interest herein, has not waived, in any manner, its immunity from suit, or consented to be sued herein, and there is no act of Congress authorizing this action.

The Court, therefore, is of opinion, that the several motions to dismiss should be *sustained*; and, in the event that plaintiff should elect to stand upon his bill of complaint, final decree may be prepared dismissing the bill.

A. A. HOEHLING,
June 6, 1922. *Justice.*

Order Sustaining Motion to Dismiss Bill.

Filed June 20, 1922.

* * * * * * *

This cause came on to be heard on the motions of the defendants to dismiss the bill of complaint herein filed and was argued by counsel; and the court, after consideration thereof, and being fully advised in the premises, it is this 20th day of June, 1922,

Ordered that the motion to dismiss be and the same is
23 hereby granted with leave to plaintiff, if so advised, to amend his bill of complaint.

By the court:

A. A. HOEHLING,
Justice.

Amended Bill of Complaint.

Filed June 20, 1922.

* * * * * * *

Plaintiff, John G. Morrison, Jr., respectfully shows to the Court:

1. That he is a citizen of the United States, a citizen and resident of the State of Minnesota, and was duly enrolled as a member of the former White Earth Band of the Chippewa Indians of Minnesota then existing, and was duly allotted land on the White Earth Reservation as such, and is a member of that class of persons described as "all the Chippewa Indians in the State of Minnesota" in an agreement or agreements duly entered into with the United States and hereinafter more particularly described, and therein declared to be the sole owners and beneficiaries of the net funds received and to be received from the sale and disposition of certain lands and timber thereon ceded to the United States in trust under said agreement or agreements, as hereinafter set out, and brings this suit in his own right as well as for and on behalf of all other persons included within said class named in said agreement or agreements and similarly situated.

2. That the defendant, Albert Bacon Fall, is a citizen of
24 the United States, a resident of the State of New Mexico, commorant of the District of Columbia, and Secretary of the Interior, and is sued herein in his official capacity; that the defendant, Charles H. Burke, is a citizen of the United States, a resident of the State of South Dakota, commorant of the District of Columbia, and Commissioner of Indian Affairs, and is sued herein in his official capacity; that the defendant, William Spry, is a citizen of the United States, a resident of the State of Utah, commorant of the District of Columbia, and Commissioner of the General Land Office, and is sued herein in his official capacity; that the defendant, Andrew W. Mellon, is a citizen of the United States, a resident of the State of Pennsylvania, commorant of the District of Columbia, and Secretary of the Treasury, and is sued herein in his official capacity.

3. That on January 14, 1889, and for a long time prior thereto, the Fond Du Lac and Grand Portage Bands, respectively, of the Lake Superior Tribe of Chippewa Indians occupied two separate reservations in the State of Minnesota acquired for valuable consideration and set apart for the exclusive use of the members of said bands by article two of the treaty of September 30, 1854 (10 Stats., 1109); that the members of eleven bands comprising the Chippewas of the Mississippi Tribe, which tribe was separate and distinct from

the Lake Superior Tribe of Chippewa Indians, occupied eight reservations in the State of Minnesota which had been acquired by the Chippewas of the Mississippi Tribe for valuable consideration and which had been set aside for the exclusive use and benefit of the members of the different bands comprising the Chippewas of
25 the Mississippi Tribe. Pursuant to authority contained in the Act of May 15, 1886 (24 Stats., 44), the United States sought by agreements to secure a readjustment of the land holdings of the different bands of the two tribes of Chippewa Indians occupying reservations in the State of Minnesota. The agreements negotiated were unsatisfactory, and the Congress of the United States conceived a definite plan for the consolidation of all the Indian property of all the different bands or tribes of Chippewa Indians situated in the State of Minnesota and for the equal disposition thereof, share and share alike among the individual members thereof, as is more particularly set out in H. R. Report No. 789, 50th Cong., 1st Ses., and as embodied in the Act of January 14, 1889 (25 Stats., 642).

The Act of January 14, 1889 (25 Stats., 642), provided as follows:

By Sec. 1 the President was authorized to appoint a commission, composed of three commissioners who were directed

"to negotiate with all the different bands or tribes of Chippewa Indians in the State of Minnesota for the complete cession and relinquishment in writing of all their title and interest in and to all the reservations of said Indians in the State of Minnesota, except the White Earth and Red Lake Reservations, and to all and so much of these two reservations as in the judgment of said commission is not required to make and fill the allotments required by this and existing acts, and shall not have been reserved by the commissioners for said purposes, for the purposes and upon the terms hereinafter stated."

The cession and relinquishment of the Indian title to all the different reservations in Minnesota, except the Red Lake Reservation, was to be deemed sufficient if made and assented to in writing by two-thirds of the male adults over 18 years of age of the band or tribe of Indians occupying and belonging to each reservation; as to
26 the Red Lake Reservation the cession and relinquishment was to be deemed sufficient if made and assented to in writing by two-thirds of the male adults over 18 years of age of all the Chippewa Indians in Minnesota, said Red Lake Reservation embracing 3,260,000 acres of land. For the purpose of ascertaining whether the proper number of Indians yielded and gave their assent to the cession as aforesaid, and for the purpose of making the allotments and payments thereafter provided for in said Act, the Commissioners were directed to make an accurate census of each tribe or band. Sec. 1 then provided:

"and the acceptance and approval of such cession and relinquishment by the President of the United States shall, be deemed full

and ample proof of the assent of the Indians, and shall operate as a complete extinguishment of the Indian title without any other or further act or ceremony whatsoever for the purposes and upon the terms in this act provided:

Sec. 2 provided for the organization of the Commission and the performance of the duties intrusted to the members thereof.

Sec. 3 directed that "as soon as the census had been taken, and the cession and relinquishment has been obtained, approved and ratified, as specified in section one of this Act," allotments in severalty, as soon as practicable, should be made under the direction of said commissioners to the Indians residing on the Red Lake Reservation out of the lands reserved for allotment purposes on said Red Lake Reservation, and all other members of the bands or tribes who did not desire to take their allotments on the reservation where they were then living, were to be removed to and allotted on that portion of the White Earth Reservation reserved by the commissioners
27 for allotment purposes. The allotments were to be made under the provisions of the Act of February 8, 1887 (24 Stat., 366), commonly known as the General Allotment Act, which Act (Sec. 2) clothed the Secretary of the Interior with full authority to arbitrarily allot land to any Indian who failed to take his or her allotment within four years.

By Sec. 4 as soon as the cession and relinquishment of said Indian title was obtained and approved as the Act directed the Commissioner of the General Land Office was directed to cause the ceded lands to be surveyed in the manner provided for the survey of public lands; when the surveys were completed the Secretary was directed to have the land examined by competent examiners and classified into 40 acre lots, all lands upon which "there is standing or growing pine timber" were to be classified as "pine lands" and "all other lands acquired from the said Indians on said reservations other than 'pine lands' are for the purposes of this Act termed 'agricultural lands'," detailed directions being contained in this section for the ascertaining of the quantity and value of the pine on each tract, so as to protect the Indians against loss, and in no event was any of the pine timber to be estimated at less than $3 per thousand feet.

By Sec. 5 after the survey, examination and appraisals of the "pine lands" were fully completed said lands and the timber thereon were to be advertised and sold at public auction to the highest bidder for cash in 40 acre parcels, but in no event were they to be sold at less than their appraised value. Any "pine lands" remaining unsold were thereafter subject to private sale for cash at their appraised value.

28 By Sec. 6 the lands classified as agricultural lands were to be disposed of "to actual settlers only under the provisions of the homestead law," at the rate of $1.25 per acre to be paid in five equal annual payments before patent issued.

Sec. 7 provided as follows:

"That all money accruing from the disposal of said lands in conformity with the provisions of this act shall, after deducting all the

expenses of making the census, of obtaining the cession and relinquishment, of making the removal and allotments, and of completing the surveys and appraisals, in this act provided, be placed in the Treasury of the United States to the credit of all the Chippewa Indians in the State of Minnesota as a permanent fund, which shall draw interest at the rate of five per centum per annum, payable annually for the period of fifty years, after the allotments provided for in this act have been made, and which interest and permanent fund shall be expended for the benefit of said Indians in manner following: One-half of said interest shall, during the said period of fifty years, except in the cases hereinafter otherwise provided, be annually paid in cash in equal shares to the heads of families and guardians of orphan minors for their use; and one-fourth of said interest shall, during the same period and with like exception, be annually paid in cash in equal shares per capita to all other classes of said Indians; and the remaining one-fourth of said interest shall, during the said period of fifty years, under the direction of the Secretary of the Interior, be devoted exclusively to the establishment and maintenance of a system of free schools among said Indians, in their midst and for their benefit; and at the expiration of the said fifty years, the said permanent fund shall be divided and paid to all of said Chippewa Indians and their issue then living, in cash, in equal shares: Provided, That Congress may, in its discretion, from time to time, during the said period of fifty years, appropriate, for the purpose of promoting civilization and self-support among the said Indians, a portion of said principal sum, not exceeding five per centum thereof."

Reference is here made to said Act of January 14, 1889, in its entirety to the same extent as though it were herein set out in full.

4. Within the time prescribed in section 1 of said Act of January 14, 1889, the President appointed the three Commis-
29 sioners, and thereafter and during the year 1889 said Commissioners, acting for and on behalf of the United States, interpreted and explained the provisions of the said Act of January 14, 1889, to the Indians with whom the agreements were to be made, and explained particularly the proviso to section 7 of said Act, representing to the Indians that by said proviso Congress was given the power in its discretion from time to time "in case of the failure of crops or any unforeseen misfortune," arising during the said period of fifty years, to appropriate a part of said principal sum, not exceeding 5 per centum thereof; that the Indians making the cessions understood from the interpretation given them by said Commissioners of said proviso to section 7 that the principal fund was only to be encroached upon in case of actual need, and then only for the purposes of relieving distress, and that so understanding and believing the members of each band or tribe of Chippewa Indians occupying reservations within the State of Minnesota entered into agreements with said Commissioners representing the United States under and by virtue of which they ceded all of their lands not needed for allotment purposes to the United States upon the express terms and for the express purposes stated in said Act of January 14, 1889; that

thereafter the President of the United States on March 4, 1890, with the complete record of negotiations before him which contained the explanation and interpretation of the proviso to section 7 of said Act as above set out, duly approved each of said agreements and so advised the Congress of the United States by message dated March 4, 1890, said message, agreements, and record of the negotiations being set out in House Executive Document No. 247, 51st
30 Congress, First Session, to which reference is here made to the same extent as though said message, agreements and record of the negotiations were herein set out in full.

5. Plaintiff represents that by said agreements, so entered into with all the different bands or tribes of Chippewa Indians in the State of Minnesota there was an immediate and complete cession of all right, title and interest of all the different bands or tribes of said Indians and of the United States in and to said property in trust for the exclusive benefit of a well defined class, designated in the agreements as "all the Chippewa Indians in the State of Minnesota," of which class plaintiff is a member; that the trust thus created contained perfect limitations for the disposition of the ceded property and the proceeds to be derived therefrom which needed only to be obeyed and fulfilled by the Administrative Officers of the United States who were charged with the duties and obligations of carrying out its plain terms; that upon the approval of said agreements the United States had no pecuniary interest in said property, and that neither the Congress of the United States nor the Administrative Officers of the United States had or have any power to dispose of any of said property in disregard of the plain terms and provisions of said agreements to the loss and injury of said designated class; that plaintiff, and all other members of said class similarly situated, has and have a vested interest in the net proceeds received and to be received from the sale and disposition of said property and in the annual income received and to be received therefrom.

6. Plaintiff further represents that the Commissioner of
31 the General Land Office and the Secretary of the Interior, without any authority of law therefor, and in defiance of the express terms of said agreements which are the only authority that has ever existed for the survey or classification of said ceded lands and which directed the classification of all the ceded lands as either "pine lands" or "agricultural lands," acting outside of the scope of their lawful authority but under color of their offices, illegally and wrongfully caused about 600,000 acres of said ceded lands, much of which were covered with heavy stands of pine timber, to be classified as "swamp and overflowed lands", and have, in disregard of said agreement and without any authority of law therefor issued or caused to be issued patents conveying away approximately 400,000 acres of said lands so illegally classified, without any consideration whatsoever to the Indians therefor; and that plaintiff is informed and believes, and therefore alleges upon information and belief, that the Secretary of the Interior and the Commissioner of the General Land Office will, unless restrained by order of this Court, issue patents to the remaining lands so illegally classified as swamp and over-

flowed lands without any consideration to the Indians therefor and contrary to the express provisions of said agreements, thereby causing irreparable loss and injury to plaintiff and all other members of said class similarly situated.

7. Plaintiff further represents that by section 6 of said agreements homestead settlers upon the trust lands classified as "agricultural lands" were to receive patents only upon the payment of the full purchase price, viz., $1.25 per acre, which was to be paid into the trust fund standing to the credit of all the Chippewa Indians
32 in Minnesota and which fund was to bear interest at the rate of 5 per centum per annum; that by an Act approved May 17, 1900 (31 Stats., 179), known as the Free Homestead Act, it was provided, "that all settlers under the homestead laws of the United States upon the agricultural public lands, which have already been opened to settlement, acquired prior to the passage of this Act by treaty or agreement from the various Indian tribes, who have resided or shall hereafter reside upon the tract entered in good faith for the period required by existing law, shall be entitled to a patent for the land so entered upon the payment to the local land officers of the usual and customary fees, and no other or further charge of any kind whatsoever shall be required from such settler to entitle him to a patent for the land covered by his entry"; "all sums of money so released which if not released would belong to any Indian tribe shall be paid to such Indian tribe by the United States, and in the event that the proceeds of the annual sales of the public lands should be insufficient to meet the payments theretofore authorized for agricultural colleges and experimental stations," such deficiency for the support of the colleges and stations was to be paid by the United States. Plaintiff represents that none of the lands ceded under the agreements of 1889 were in 1900 "public lands," nor have any of them since become public lands and that said Act of May 17, 1900, had and has no application to said lands, but that if said Act does apply to said ceded lands the Commissioner of the General Land Office, cannot lawfully issue a patent conveying any of said trust lands to any homestead entryman until the full purchase price of $1.25 per acre has been paid therefor; that the Commissioner
33 of the General Land Office acting outside of the scope of his lawful authority, but under color of his office, has, since May 17, 1900, issued patents to several thousand homestead entrymen conveying to them the lands embraced in their entries without any payment being made for said lands, and that no moneys have been deposited in the trust fund standing to the credit of said designated class for the lands so patented; that the loss in interest alone which complainants have sustained amounts to substantially as much as the principal; that plaintiff is reliably informed and believes, and therefore alleges upon informtion and belief, that a large number of similar applications for patents by homesteaders on said trust lands aggregating several thousand are now pending and that said applications will, unless the Commissioner of the General Land Office is restrained by order of this Court from so doing, be approved for patent and that patents will issue therefor without the payment of

$1.25 per acre or any sum whatsoever being made therefor, thereby causing plaintiff and all other members of said class further irreparable loss and injury.

8. Plaintiff represents that by sections 4 and 5 of the agreements of 1889 the timber on the lands classified as "pine lands" was to be estimated and appraised at not less than $3 per thousand feet, and that the land and standing timber thereon were to be sold at public auction at the highest price obtainable, in no event for less than their appraised value; that in the disposition of the pine lands under the administration of the Commissioner of the General Land Office great frauds were practiced by the under estimation of the timber by the Government appraisers in the interest of lumber com-
34 panies; that these frauds resulted in the Indians receiving less than eight cents per thousand feet for much of the timber sold prior to 1898; that the frauds became so notorious that they resulted in investigations by officers of the Department and a Select Committee of Congress; that as a result of said investigations Congress in order to guard against further frauds being committed, and for the more complete carrying into effect the provisions of said trust relating to the sale of the timber passed an Act approved June 27, 1902 (32 Stats., 400), which changed the method of disposing of the timber so that instead of being sold standing, as provided in said agreements, it was cut into logs and sold on bank scale. Plaintiff further represents that said Act also contained the following provision:

" 'After the merchantable pine timber on any tract, subdivision, or lot shall have been removed, such tract, subdivision, or lot shall, except on the forestry lands aforesaid, for the purposes of this Act, be classed and treated as agricultural lands, and shall be opened to homestead entry in accordance with the provisions of this Act.' "

that by an Act approved May 23, 1908 (35 Stats., at 272, Sec. 4), Congress enacted a similar provision to that contained in the Act of June 27, 1902, and above set out and expressly providing that "none of said lands shall be disposed of except on payment of $1.25 per acre." Plaintiff represents that the lands classified as "pine lands" from which the timber has been and is being removed, was and is reasonably worth, and would bring in the open market if sold at public auction as provided in the said agreements, from $5 to $250 per acre, much of said land facing the lakes and being very valuable; that the said Acts of June 27, 1902, and May 23, 1908, in so
35 far as they directed the disposition of the cut over pine lands under the homestead laws at $1.25 per acre are confiscatory of the property of plaintiff and of all other members of said designated class, and in so far as they undertake to change the terms and conditions of the trust created by said agreements to the great and irreparable loss and injury of the plaintiff and all other members of said class constitute the taking of the property belonging to plaintiff and all other members of said designated class without due process of law and without just compensation being rendered there-

for and in violation of the Fifth Amendment to the Federal Constitution. Plaintiff further represents that the defendant, the Commissioner of the General Land Office, has disposed of a large part of said cut over pine lands under said unconstitutional enactments, that he has not required the payment of $1.25 per acre therefor as provided in the Act of May 23, 1908, said lands having been patented without consideration therefor being paid the Indians, and that he will continue to so dispose of the remainder of said lands, aggregating many thousands of acres, unless enjoined and restrained by order of this Court from so doing, to the great and irreparable loss and injury of plaintiff and all other members of said designated class.

9. Plaintiff further represents that by sections 4 and 5 of said agreements the trust lands classified as "pine lands" and the timber thereon were to be sold at public auction at the highest price obtainable; that by an Act approved June 27, 1902 (32 Stats., at 402), Congress authorized the Forester of the Department of Agriculture with the approval of the Secretary of the Interior to select, including certain lands therein expressly designated, about 225,000
36 acres of said trust lands classified under the agreements as "pine lands" to be included in a forest reserve. The Act directed the sale and disposition of the merchantable timber on 95 per cent of a part of the land and directed the retention of all of the timber on certain tracts and five per cent of the timber within the area to be cut. By an Act approved May 23, 1908 (35 Stats. 268), Congress directed the creation of a National Forest Reserve, the inclusion therein of about 225,000 acres reserved under the Act of June 27, 1902, and a large body of additional pine lands. This latter Act directed that the timber on ten sections and on certain islands and points described therein should be preserved, the disposition of 90 per cent of the remaining timber and the retention of the remaining 10 per cent for the purposes of reforestation, the appraisal and payment for the timber left standing and for the payment of the land at the rate of $1.25 per acre. Plaintiff represents that this land was and is reasonably worth, and would bring in the open market if sold at public auction as provided in said agreements from $5 to $250 per acre, much of said lands facing the lake fronts and being very valuable; that said Acts in so far as they undertake to take said trust lands at $1.25 per acre are confiscatory of the property of plaintiff and of all other members of said designated class, and in so far as they undertake to change the terms and conditions of the trust created by said agreements to the great and irreparable loss and injury of the plaintiff and all other members of said designated class constitute a taking of the property belonging to plaintiff and all other members of said designated class without due
37 process of law and without just compensation being rendered therefor and in violation of the Fifth Amendment to the Federal Constitution. Plaintiff further represents that the Secretary of the Interior will, unless restrained and enjoined from so doing, dispose of said lands and accept payment therefor at the rate of $1.25 per acre, to the great and irreparable loss and injury of plaintiff and all other members of said designated class.

10-*a*. Plaintiff further represents that by the said Act of January 14, 1889, the Commissioners appointed thereunder were authorized to negotiate with all the different bands or tribes of said Indians for the complete cession of all their right, title and interest in and to all reservations in the State of Minnesota except so much of the White Earth and Red Lake Reservations as was not required to make and fill the allotments therein authorized; that the only Indians authorized to receive allotments on the Red Lake Reservation were the Indians belonging thereto who numbered 1,168 as shown by the census roll; that the cessions to the United States in trust, as hereinbefore described, were of all the lands except enough to make and fill the allotments; that because of the character of the land on the Red Lake Reservation and in order to enable the 1,168 Indians entitled to allotments thereon to select suitable lands for allotment purposes, the Commissioners reserved, until the allotments were selected, approximately 700,000 acres, the Commissioners stating in their official report (H. R. Ex. Doc. No. 247, 51st Cong., 1st Ses., at p. 15) the reasons therefor in these words:

"The Red Lake Reservation, which they cede to the United States, contains 3,260,000 acres. The number of Indians occupying the same is 1,168.

38 "The boundaries of the diminished reservation, from which allotments to the Red Lake Chippewas are to be made, are as follows:

(Here follows a description of the about 700,000 acres reserved.)

"This is larger than they will eventually require, but as there are swamps and other untillable lands therein, it can not be reduced until after survey and allotments shall be made."

Plaintiff further represents that by said agreements (Sec. 3) the Commissioners were directed to allot land to the Indians on the Red Lake Reservation under the provisions of the Act of February 8, 1887 (24 Stats., 388), commonly known as the General Allotment Act, as soon as practicable after the census had been taken and the cession and relinquishment obtained; that said Commission failed, neglected or refused to make said allotments as directed by said agreements; that said Commission was discontinued in 1901 and by an Act approved June 27, 1902 (32 Stats., 400, Sec. 5), the work of completing the allotments devolved upon the Secretary of the Interior, the Act providing:

"That the Secretary of the Interior shall proceed as speedily as possible to complete the allotments to the Indians" (meaning the allotments to the members of said Red Lake Band) "which allotments shall be completed before opening the agricultural lands to settlement."

Plaintiff represents that by section 2 of the General Allotment Act of February 8, 1887, under which the allotments were to be made

the Secretary of the Interior was given authority to arbitrarily select and allot land for any Indian on the Red Lake Reservation who failed to select his or her allotment within four years after the census was made and the cessions became complete; that the cessions became final on March 4, 1890, and that the census roll had then been completed; that the agricultural lands referred to in Sec. 5 of the Act of June 27, 1902, and above quoted, were opened to
39 entry in 1908, but that the Secretary of the Interior, in disregard of his plain duty refused and still refuses to allot a single Indian on the Red Lake Reservation lands, or to permit any Indian to select or receive an allotment thereon; that many of those who were parties to said agreements and entitled to allotments of land thereunder on said reservation have since died without receiving their allotments and that their allotment rights have been extinguished by their failure to obtain same during their lives, thus depriving them and their children of property intended to be secured to them by said agreement; that said reservation has been held for the past 33 years as a closed reservation excluding all form of development and improvement and thereby denying to the former members of said band citizenship in the State and Nation, free public schools, churches, highways, association with white settlers and land owners and all those essential elements of civilization necessary to their proper development and progress; that said refusal to permit the members of said band to take their allotments, and to allot those who failed to so do has prevented the 50 year trust period from commencing to run and has been arbitrary and capricious by the said Secretary of the Interior and the Commissioner of Indian Affairs and has prevented the disposition of the lands reserved, as provided by said agreements of 1889, and has been used as a pretext for the maintenance and continuation of an agency, the expenses of maintaining which are now being illegally paid out of the trust funds belonging to all the Chippewa Indians in the State of Minnesota amounting annually to approximately $50,000, and has, in addition thereto, resulted in the unnecessary and illegal expenditure of more than $2,500,000 of the
40 money belonging to all the Chippewa Indians of Minnesota, in the care and support of said Red Lake Indians who would have been at all times self-sustaining had allotments been made to them as provided by said agreements, thus reducing the principal trust fund of all the Chippewa Indians of Minnesota and into which the net proceeds of all property sold was and is to be deposited, and thereby reducing the amount to which plaintiff and all other members of said class similarly situated are annually entitled under said agreements and in which they have a vested interest and likewise reducing the school fund for the education of the Chippewa Indian children, and in which plaintiff and all other members of said class similarly situated have an interest for the benefit of their children; and that the said Secretary of the Interior and the Commissioner of Indian Affairs will, arbitrarily and capriciously and without authority of law, unless commanded by proper order of this Court, continue to refuse to permit the said Red Lake Indians to

take their allotments in severalty, to the great and irreparable injury of plaintiff and all other members of said class similarly situated.

10-*b*. Plaintiff further represents that by an Act of Congress approved February 20, 1904 (33 Stats., 48), it was declared that the Indians belonging on the Red Lake Reservation should possess their diminished reservation independent of all other bands of the Chippewa tribe of Indians, and further expressly declared that nothing in that Act should deprive the Indians belonging on the Red Lake Reservation of any benefits to which they were entitled under the agreements of 1889, which declaration undertook
41 to preserve the rights of the Indians belonging on the Red Lake Reservation in and to all the property ceded in trust as aforesaid by all the other different bands or tribes, and to divest all the members of said designated class, hereinbefore described, not belonging on the Red Lake Reservation, of their interest in the said 700,000 acres, or so much thereof as was not needed to make and fill the allotments of 80 acres each to the 1,168 members of the Red Lake Band, and which 700,000 acres was included in the agreements of 1889 and with the exception of so much thereof as was necessary to make and fill the allotments to the 1,168 members of the Red Lake Band passed, with all other property belonging to all the Chippewa Indians in Minnesota not needed for allotment purposes, under the terms of the cession to the United States in trust as aforesaid. Plaintiff represents that the lands embraced in said Act of February 20, 1904, were not then, nor had they at any time been the property of the United States; that they passed to the United States in trust under the said agreements of 1889 burden with and subject to all the conditions enumerated in said agreements and hereinbefore set out, and that it was not within the power of Congress to confer upon the Indians residing upon the Red Lake Reservation, and who constituted only a small portion of said designated class, exclusive ownership of all of said 700,000 acres without any consideration to the great body of said designated class and to their complete loss and injury, and in which lands and the proceeds to be derived therefrom plaintiff and all other members of said designated class similarly situated had and have a vested interest; that said Act of February 20, 1904, was confiscatory of the property of plaintiff and all other members of said designated class and under-
42 took to convey away property in which the United States had no pecuniary interest and which was not the property of the United States and over which the United States possessed no other power or control except the power to see to it that the trust created by the agreements of 1889 was carried into effect without loss or injury to the designated class; that said Act is unconstitutional in that it is violative of the Fifth Amendment to the Federal Constitution and is null and void. Plaintiff further represents that the defendants, the Secretary of the Interior and the Commissioner of Indian Affairs, have proceeded and are now proceeding to administer said property under said unconstitutional enactment of February 20, 1904, and that they will continue to so proceed to the

great and irreparable loss and injury of plaintiff and all other members of said designated class similarly situated, unless enjoined and restrained from so doing by proper order of this Court.

10-c. Plaintiff further represents that by an Act approved May 18, 1916 (39 Stats., at 137), Congress authorized the creation of a forest reserve, known as the Red Lake Indian Forest out of a part of said 700,000 acres reserved on the Red Lake Reservation as hereinbefore more particularly set out; that by said Act provision was made for the sale and disposition of the timber within said Red Lake Indian Forest and the deposit of the net proceeds received therefrom in the Treasury of the United States to the Credit of the "Red Lake Indians," which proceeds were to draw interest at the rate of four per centum per annum, said interest to be used by the Secretary of the Interior for the exclusive benefit of the "Red
43 Lake Indians." Plaintiff represents that all of the lands, aggregating about 250,000 acres included within said Red Lake Forest Reserve were heavily timbered lands, were not subject to allotment under the agreements of 1889 and were included within the terms of the cession made by said agreements and became a part of the trust property ceded to the United States as hereinbefore set out; that said forest reserve was created without limitation as to time of its existence and was designed to be and is under the terms of said Act perpetual; that it was not created for the benefit of the Indians or for the purpose of effectuating any provision contained in the agreements of 1889 under which the trust was created as aforesaid; that there was no provision for compensation to said designated class for the lands embraced therein or for any compensation whatsoever therefor; that said Act undertook to divert the proceeds received from the sale of said timber from the fund standing to the credit of all the Chippewa Indians in the State of Minnesota in the Treasury of the United States as they were directed to be deposited by said agreements, and which fund was a five per cent interest bearing fund, to a new fund placed to the credit of the "Red Lake Indians" and which was to bear interest at the rate of four per cent per annum, and authorized the use of the interest annually accruing thereon for the exclusive use and benefit of the members of the Red Lake Band to the exclusion of all the other members of said designated class to their loss and injury. Plaintiff represents that the power of Congress over said trust property was limited to the execution of the trust in conformity with the plain provisions of the agreements under which said trust was created; that said
44 Act of May 18, 1916, in so far as it undertook to create said forest reserve in perpetuity without any compensation for the property embraced within its limits, and in so far as it attempted to divert the proceeds received from the sale of the timber from said forest reserve from the five per cent interest bearing fund standing to the credit of "all the Chippewa Indians in the State of Minnesota" to the four per cent interest bearing fund to be created and placed to the credit of the "Red Lake Indians" was and is in violation of the express terms of the trust hereinbefore described, was

and is confiscatory of the rights of plaintiff and all other members of said designated class in and to said property and was in excess of the power of Congress over said property in violation of the Fifth Amendment to the Federal Constitution and is null and void. Plaintiff further represents that there has been received from the sale of timber from said "Red Lake Indian Forest" approximately $500,000 which has, under the provisions of said unconstitutional enactment of May 18, 1916, been deposited in the Treasury of the United States to the credit of the Red Lake Indians, and which fund and the interest accruing thereon is being used under said unconstitutional enactment by the defendants, the Secretary of the Interior and the Commissioner of Indian Affairs, for the exclusive use and benefit of the Indians residing on the Red Lake Reservation, and that the defendant, the Secretary of the Treasury, has refused, and still refuses, to transfer the proceeds received from the sale of timber from said Red Lake Indian Forest from the fund standing to the credit of the "Red Lake Indians" and to deposit the same in
the fund standing to the credit of "all the Chippewa Indians
45 in the State of Minnesota," and that he will, unless required
by mandatory order of this Court, continue to retain said funds under said unconstitutional enactment in the fund standing to the credit of the "Red Lake Indians," and that the defendants, Secretary of the Interior and Commissioner of Indian Affairs, are using, and will continue to use, unless restrained and enjoined by proper order of this Court from so doing, the interest annually accruing upon said fund unlawfully standing to the credit of the "Red Lake Indians" for the exclusive use and benefit of the Indians residing on the Red Lake Reservation, to the great loss and injury of plaintiff and all other members of said designated class similarly situated.

Plaintiff further represents that by the arbitrary refusal of the defendants, the Secretary of the Interior and the Commissioner of Indian Affairs, in disregard of their plain duties under the law to allot land to the Indians on the Red Lake Reservation they have prevented for many years the commencement of the running of the fifty year trust period provided for in section 7 of said agreement; that the adherence of the defendants, the Secretary of the Interior and the Commissioner of Indian Affairs, to the unconstitutional and void provisions of the Acts of February 20, 1904 and May 18, 1916, has prevented, and is to-day preventing the administration of said estate in conformity with the plain terms of the trust hereinbefore described, and will, if adhered to defeat the execution of said trust to the great loss and irreparable injury of plaintiff and all other members of said designated class similarly situated.

11-*a*. Plaintiff further represents that by said agreements
46 of 1889 (Section 7) it was expressly provided that one-fourth
of the interest annually accruing on the principal trust fund was, during the period of fifty years, to be "devoted exclusively to the establishment and maintenance of a system of free schools among said Indians in their midst and for their benefit;" that the interest

now annually accruing on said principal fund amounts to about $240,000, one-fourth of which under said agreements is to be devoted exclusively to the establishment and maintenance of a system of free schools in and amongst the Indians; that there are more than 4,000 Chippewa Indian children of school age and that if said school fund was divided equally between said children each child would be entitled to less than $15; that all of the Chippewa Indians of Minnesota, except those residing on the Red Lake Reservation who have not been allotted, and numbering less than 1,500, are citizens of the United States and of the State of Minnesota, the great majority of whom are taxpayers; that of more than 4,000 Indian children of school age, approximately 3,200 reside in established public school districts of the State having ample school facilities for all children residing therein; that the State of Minnesota maintains a splendid public school system, second to no State in the Union, and by its laws the parent or parents of every Indian child within the limits of the State is required, under heavy penalty, to see to it that his, her or their child or children of school age are in regular school attendance during the school term; that the Commissioner of Indian Affairs with the approval of the Secretary of the Interior has entered into contracts with the authorities of the St. Mary's Mission Boarding School located at Red Lake, Minnesota, for the
47 support and education of approximately 100 Indian children, and with the authorities of the St. Benedict's Mission Boarding School located at White Earth, Minnesota, for the support and education of approximately 120 Indian children covering the present school year; that there is now being paid out of said school funds to said mission boarding schools for the support and education of said children during the present school year approximately $25,000, or five-twelfths of the entire school fund available for the education of all Chippewa children; that of the about 120 Indian children for whom contracts have been so entered into with the authorities of the St. Benedict's Boarding Mission School, approximately 80 per cent are children whose parents reside in public school districts whose homes are conveniently located to public schools having ample accommodation for each of said children, many of them residing in towns where the school houses are located within a few blocks from the homes of their parents; that many of the children for whom contracts have been made with the St. Mary's Mission Boarding School are similarly situated; that said mission boarding schools form no part of a system of free schools under the direction of the Secretary of the Interior as authorized by said agreements; that the Secretary of the Interior has no jurisdiction or control over said mission boarding schools which are operated, controlled and maintained by an organization separate and distinct from the Department of the Interior; that the expenditure of said school funds for the maintenance and education of said children in said mission schools is without authority of law, and that the remaining approximately $35,000 of said school
48 fund is inadequate to provide suitable, and in many cases any, school facilities for those children who are without pub-

lic school facilities and deprives all of said Indian children who are not embraced within the favored and illegal contracts entered into with said mission schools, of any part of said school fund now being paid under said contracts; that the Commissioner of Indian Affairs will, unless restrained by order of this Court, continue to illegally pay the amount provided for in said contracts to said mission schools out of said school funds, and that he will, unless restrained by order of this Court enter into similar illegal contracts with said mission schools at the commencement of the next school year, and that the Secretary of the Interior will, unless restrained by order of this Court, approve said illegal contracts to be so entered into, to the great and irreparable loss and injury of plaintiff and all other members of said class similarly situated.

11-*b*. Plaintiff further represents that an Act of Congress approved May 24, 1922, Public No. 224, 67th Congress, contained the following provision:

"The Secretary of the Interior is authorized to withdraw from the Treasury of the United States, in his discretion, the sum of $46,570, or so much thereof as may be necessary, of the principal sum on deposit to the credit of the Chippewa Indians in the State of Minnesota arising under section 7 of the Act of January 14, 1889, and to expend the same for payment of tuition for Chippewa Indian children enrolled in the public schools of the State of Minnesota: Provided, That the Secretary of the Interior may make payments therefrom of such amounts as he deems proper and just in aid of public schools of the State of Minnesota which have enrolled Chippewa Indian children therein during the fiscal year 1922, and in excess of the rate of compensation fixed in any existing contracts with public school districts, where such rate is inadequate."

49 Plaintiff represents that definite provision was made by said agreements for the education of the children embraced within said designated class for whose exclusive benefit said trust was created and that no authority was conferred upon Congress to appropriate or use any part of the proceeds received from the disposition of said trust estate in aiding the public school system of the State of Minnesota and that said enactment is in excess of the power of Congress over said funds. Plaintiff further represents that the public schools of the State of Minnesota, which the Chippewa Indian children are now attending and for which said appropriation is to be used in the payment of tuition, are a part of the free public school system of that State; that under the laws of the State of Minnesota every Indian child residing in a public school district in said State is entitled to admission to the public school without any cost whatsoever, and that the parents of every such child are required by positive law, under heavy penalty, to see to it that their child or children, of school age, regularly attend the public schools; that said appropriation of $46,570, is a pure gratuity out of the trust fund to the public school system of the State of Minnesota and in violation of the plain terms and provisions of said agreements,

without any additional benefits or advantages whatsoever to any Indian child, and that if tuition payments for Indian children attending public schools in Minnesota were required or were necessary under the State laws, the money being illegally paid under the contracts with the mission schools would be abundant to pay said tuition charges; that there is no authority under the laws of the State of Minnesota for any officer of any school district in Minnesota to enter into a contract for the payment of tuition for
50 Indian children residing in any school district and attending the public schools, and no authority of law for the receipt by any officer of money under any such contract, the laws of said State requiring the school officials to admit said children to said schools free of charge. Plaintiff represents that said appropriation is in violation of the express terms and provisions of the trust under which said trust funds are being held in the Treasury of the United States, in violation of the Fifth Amendment to the Federal Constitution and is unconstitutional, null and void, but that the Secretary of the Interior will, unless restrained and enjoined by order of this Court, proceed under said unconstitutional enactment to withdraw from the principal trust fund said $46,570 and use the same in the payment of tuition for certain Indian children attending certain public schools in the State of Minnesota, to the great and irreparable loss and injury of plaintiff and all other members of said class similarly situated.

12-*a*. Plaintiff further represents that pursuant to a governmental policy then long established the United States in 1889 and for many years theretofore maintained and had maintained agencies among the Chippewa Indians in Minnesota which were a part of its Indian Bureau and had always defrayed the expenses of maintaining said agencies out of the public funds of the United States; that by section 7 of the agreements of 1889 the particular expenses to be paid out of the proceeds received from the sale of the ceded property were expressly enumerated, and that no provision is found in said agreements for the payment of any agency expenses of the United States at any time out of the trust funds of the
51 Indians, that it was understood by said Indians and by the Officers and Agents of the United States who negotiated and signed said agreements for the United States that all agency expenses were thereafter to be defrayed by the United States; that pursuant to said understanding for more than twenty years after said agreements became effective the United States defrayed all the expenses of its agencies maintained by it pursuant to its said governmental policy, including all agencies in Minnesota, out of the public moneys; that said policy continued down to about the year 1911 when Congress commenced using Indian funds under its control in the payment of the regular agency expenses of the Indian Bureau; that thereafter and until the year 1921 the Secretary of the Interior was under this new and changed policy in violation of the said agreements of 1889 annually authorized, by provisions contained in Acts of Congress, to withdraw from the principal trust

funds of the Chippewa Indians large sums of money and to use the same for the purpose of promoting civilization and self-support among said Indians in the State of Minnesota, which said sums were withdrawn and used principally in defraying the expenses of the agencies of the Indian Bureau maintained in Minnesota; that by an Act approved March 3, 1921, Public No. 359, 66th Congress, making appropriations for the current and contingent expenses of the Bureau of Indian Affairs, etc., for the fiscal year ending June 30, 1922, it was provided:

"The Secretary of the Interior is authorized to withdraw from the Treasury of the United States, in his discretion, the sum of $100,000, or so much thereof as may be necessary, of the principal sum on deposit to the credit of the Chippewa Indians in the State of Minnesta, arising under section 7 of the Act of January 14, 1889, entitled 'An Act for the relief and civilization of the
52 Chippewa Indians in the State of Minnesota,' and to use the same for promoting civilization and self-support among said Indians exclusively for the purposes following: Not exceeding $45,000 of this amount may be expended for general agency purposes at White Earth, Red Lake, and Leech Lake Agencies."

Plaintiff represents that the agencies to be maintained out of the said $45,000 are a part of the regular Indian service of the United States and a part of the Indian Bureau; that the trust fund out of which said $45,000 for agency purposes is to be paid is the property of the said designated class in which plaintiff and all other members of said class similarly situated and his and their issue have a vested interest; that the trust settlement made by said agreements for the benefit of said designated class is bnding alike upon the Indians and the United States and is not subject to change by governmental policies and that the new policy inaugurated by the Congress of the United States in 1911, above set out, has no application to the trust created by said agreements; that said agencies are not maintained for either the support or civilization of said Indians but solely pursuant to said governmental policy; that the Congress of the United States had no lawful power to appropriate said $45,000 out of said trust fund in violation of the express terms of said trust, and to authorize the use of said money in defraying the expenses of its agencies in Minnesota which are a part of the Indian service maintained by the United States pursuant to its Indian policy, and that said authorization to withdraw and use said $45,000 for general agency purposes of the United States is in violation of the Fifth Amendment to the Federal Constitution, is the taking of the property of plaintiff and all other members of said desig-
53 nated class similarly situated without compensation and is unconstitutional, null and void; that the Secretary of the Interior has, under said void authorization withdrawn from said principal trust funds said $45,000 and is now using the same in defraying the general agency expenses at said three agencies, and will, unless restrained by order of this Court, continue to expend said money so illegally withdrawn from said principal trust fund in

defraying said agency expenses to the great and irreparable loss and injury of plaintiff and all other members of the said class similarly situated.

12-*b*. Plaintiff further represents that the Act approved May 24, 1922, Public No. 224, 67th Congress, making appropriations for the Department of the Interior for the fiscal year ending June 30, 1923, contained an item authorizing the Secretary of the Interior to withdraw from said principal trust fund the sum of $42,500 and to use the same for general agency purposes during the fiscal year commencing July 1, 1922; that for the same reasons hereinbefore stated in the preceding paragraph with reference to the items contained in the Act approved March 3, 1921, said authorization is unconstitutional, null and void, but that the Secretary of the Interior will, unless restrained by order of this Court, withdraw said $42,500 from said principal fund and expend said money for said general agency purposes to the great and irreparable loss and injury of plaintiff and all other members of said class similarly situated.

13. Plaintiff further represents that all of said Indians have for a long time been complaining against a part of said acts set out in the preceding paragraphs and many others of a similar nature, and that the Indians allotted on the White Earth Reserva-
54 tion have been particularly vigorous in their protests and that within the past three months, failing to obtain any relief from the Officers of the Department, they filed vigorous protests with other Officers of the United States; that thereupon the Commissioner of Indian Affairs caused an order to be issued directing the removal of the agency at White Earth, on the White Earth Reservation, to the town of Cass Lake, Minnesota; that an agency at White Earth has been maintained pursuant to law for more than fifty years; that at White Earth there are buildings constructed out of the funds of the Indians and public moneys which have for many years been used for agency purposes and for housing agency employees and are now being so used without any costs therefor; that in addition thereto there are other valuable buildings that have been used for school, hospital and other purposes, all of which buildings have cost in excess of $300,000 and are of the approximate value of $200,000; that in the White Earth Agency have been kept the records pertaining to the allotment and blood status of more than 7,000 of the 12,000 Chippewa Indians in Minnesota; that said records are useful and in some cases necessary in connection with the sale and disposition of allotted land on the White Earth Reservation upon which approximately 7,000 Indians were allotted; that said records were compiled at the expense of the Indians; that the town of Cass Lake is situated about 70 miles by direct line from the White Earth Reservation and within the ceded territory; that only a comparatively few Indians were allotted lands or reside in the vicinity of Cass Lake, as only a comparatively few of said In-
dians selected their allotments within the ceded territory
55 around Cass Lake; that from White Earth to Cass Lake by railroad is a distance of about 130 miles, with no direct line,

necessitating transfer at intersections *or* railroads and long delays; that there are no public buildings, nor buildings constructed out of Indian money at the town of Cass Lake that can be used for agency purposes or for the accommodation of agency employees; that if said agency is removed it will be necessary to maintain caretakers and other employees at White Earth to look after said vacant buildings, and that the money so expended would be practically sufficient to maintain said agency and said records at White Earth; that the location of said agency at the town of Cass Lake will confer no benefit upon the Indians nor will it result in decreased expenditures, but on the other hand will entail hardship and heavy expenses upon the Indians allotted on the White Earth Reservation, and will likewise cause inconvenience and heavy expenses to the general public having business at said agency; that the plaintiff is informed and believes and therefore alleges upon information and belief, that the Commissioner of Indian Affairs has instructed the Agent at White Earth to make arrangements for the leasing of buildings at Cass Lake for the use of the agency, or for the use of the agency and its employees, and the installation of vaults and other improvements necessitating the expenditure of a very large sum of money, to wit, approximately $25,000; that the said Commissioner of Indian Affairs and the Secretary of the Interior intend to and will, unless restrained by order of this Court, pay the costs of the removal of said agency, the renting of agency quarters and all im-
56 provements in connection therewith and the cost of maintenance thereof out of the trust funds of the Indians, in which plaintiff and all other members of said class similarly situated have a vested interest without any authority of law therefor, to the great and irreparable loss and injury of plaintiff and all other members of said class similarly situated.

14. Plaintiff further represents that he, plaintiff, and all other members of said designated class similarly situated for and in whose behalf this suit is filed, have no plain, complete and adequate remedy at law.

The premises considered, plaintiffs pray:

(*a*) That copy, subpœna, and all proper process issue directed to the defendants, Albert Bacon Fall, Secretary of the Interior, Charles H. Burke, Commissioner of Indian Affairs, William Spry Commissioner of the General Land Office, and Andrew W. Mellon, Secretary of the Treasury, commanding them and each of them to appear on a day certain to be named therein and answer fully, but not under oath, (answer under oath being expressly waived) the exigencies of this bill.

(*b*) That upon preliminary hearing the defendants, Albert Bacon Fall, Secretary of the Interior, and William Spry, Commissioner of the General Land Office, be restrained and enjoined by proper order of this Court, pending final hearing from approving for patent or issuing patents to any of the lands described in the sixth paragraph of this bill as "swamp or overflowed lands"; that upon final hearing said injunction be made perpetual, and that a

mandatory injunction issue directed to each of said defendants requiring them to efface or cause to be effaced from the maps and records of the surveys of said lands all designations or nota-
57 tions classifying or describing any of said lands remaining unpatented as "swamp or overflowed."

(*c*) That upon preliminary hearing the defendant, William Spry, Commissioner of the General Land Office, be restrained and enjoined pending final hearing from approving for patent or issuing patents to any of the Lands classified as "agricultural lands," and described in the seventh paragraph of this bill, until the purchase price of $1.25 per acre therefor has been fully paid; that upon final hearing said injunction be made perpetual.

(*d*) That upon preliminary hearing William Spry, Commissioner of the General Land Office, be restrained and enjoined from approving for patent, or issuing patents for any of the lands classified as "pine lands" under the agreements of 1889, and described in the eighth paragraph of this bill, to settlers under the homestead laws at $1.25 per acre; that upon final hearing so much of said Acts approved June 27, 1902 (32 Stats., 400), and May 23, 1908 (35 Stats., at 272, Sec. 4), as directed, or purport to direct, the sale or disposition of any of said lands described in the eighth paragraph of this bill and classified under the agreements of 1889 as "pine lands" under the homestead laws at $1.25 per acre be decreed unconstitutional null and void, and that said defendant, the Commissioner of the General Land Office, be enjoined from disposing of any of said lands so classified except in conformity with the provisions of said agreements of 1889 at public auction to the highest bidder.

(*e*) That upon preliminary hearing the defendant, Albert Bacon Fall, Secretary of the Interior, be enjoined from disposing of any of the lands (the timber thereon being expressly excepted)
58 included within the National Forest Reserve as described in the ninth paragraph of this bill at $1.25 per acre under said Acts approved June 27, 1902 and May 23, 1908; that upon final hearing so much of said Acts as authorize or direct the disposition of said lands at $1.25 per acre, and in violation of the provisions of said agreements of 1889, be decreed unconstitutional null and void, and that said preliminary injunction be made perpetual.

(*f*) That upon final hearing the defendants, Albert Bacon Fall, Secretary of the Interior, and Charles H. Burke, Commissioner of Indian Affairs, be required by mandatory order of this Court to permit any member of said designated class entitled to an allotment of land out of the lands reserved for allotment purposes on the Red Lake Reservation (as described in paragraph "10-*a*" of this bill) to select his or her allotment as provided in said agreements, and to allot the lands so selected to any such person or persons.

(*g*) That upon preliminary hearing the defendants, Albert Bacon Fall, Secretary of the Interior, and Charles H. Burke, Commissioner of Indian Affairs, be enjoined and restrained, pending final hearing of this cause from proceeding to administer upon the said 700,000 acres of land (described in paragraph "10-*b*" of this bill) under the

Act of February 20, 1904; that upon final hearing so much of said Act of February 20, 1904, as purports to confer the exclusive ownership of all of said 700,000 acres of land described in paragraph "10-*b*" in this bill upon the members of the former Red Lake Band be decreed unconstitutional, null and void and that the preliminary injunction be made perpetual.

(*h*) That upon preliminary hearing the defendants, Albert
59 Bacon Fall, Secretary of the Interior, and Charles H. Burke, Commissioner of Indian Affairs, be enjoined and restrained, in conformity with the allegations of paragraph "10-*c*" of this bill, from using any of the interest money accruing from the proceeds received from the sale of timber from the Red Lake Indian Forest for the exclusive use and benefit of the members of said designated class who were former members of the Red Lake Band, or who resided upon the Red Lake Reservation; that upon final hearing so much of said Act of May 18, 1916, as attempts to confer the exclusive ownership of the proceeds received from the sale of timber from said Red Lake Indian Forest upon the members of said designated class who belonged on the Red Lake Reservation, and directing the deposit of said funds in the Treasury of the United States to the credit of the "Red Lake Indians" be decreed unconstitutional null and void, and that the defendants, Albert Bacon Fall, Secretary of the Interior, and Charles H. Burke, Commissioner of Indian Affairs, be permanently enjoined and restrained from depositing any such funds hereafter received in the Treasury of the United States to the credit of the "Red Lake Indians"; that the defendant, Andrew W. Mellon, Secretary of the Treasury, be required by mandatory order of this Court to transfer the fund now standing in the Treasury of the United States to the credit of the "Red Lake Indians," to the fund standing to the credit of "all the Chippewa Indians in the State of Minnesota" and to deposit in said fund standing to the credit of "all the Chippewa Indians in the State of Minnesota" all moneys hereafter received from the sale of timber on the Red Lake Indian For-
60 est, and that said preliminary injunction be made perpetual.

(*i*) That upon preliminary hearing the defendants, Albert Bacon Fall, Secretary of the Interior, and Charles H. Burke, Commissioner of Indian Affairs, be enjoined and restrained pending the final determination of this cause (as set out in paragraph 11-*a* of this bill) from drawing or approving any warrant drawn upon the school funds of the Chippewa Indians of Minnesota for the payment of tuition and support of any child in the St. Benedict Mission Boarding School and the St. Mary's Mission Boarding School; that upon final hearing said injunction be made perpetual.

(*j*) That upon preliminary hearing the defendants, Albert Bacon Fall, Secretary of the Interior, and Charles H. Burke, Commissioner of Indian Affairs, be enjoined and restrained, pending the final determination of this cause, from drawing any warrant or approving any warrant drawn upon the trust funds standing to the credit of "all the Chippewa Indians in the State of Minnesota" for the payment of tuition of any child attending the public schools in the State of Minnesota; that upon final hearing the provision contained in the

Act approved May 24, 1922, and set out in paragraph "11-*b*" of this bill, be decreed unconstitutional null and void, and that said preliminary injunction be made perpetual.

(*k*) That upon preliminary hearing the defendants, Charles H. Burke, Commissioner of Indian Affairs, and Albert Bacon Fall, Secretary of the Interior, be enjoined and restrained (as set out in paragraphs "12-*a* and 12-*b*" of this bill) from withdrawing any of the trust funds standing to the credit of "all the Chippewa Indians in the State of Minnesota" or expending any of said funds
61 heretofore withdrawn in defraying any of the expenses of the agencies maintained among the Chippewas in Minnesota by the United States; that upon final hearing so much of the said Acts of March 3, 1921, and May 24, 1922, and described in paragraphs "12-*a* and 12-*b*" of this bill, as purported to appropriate the trust funds standing to the credit of "all the Chippewa Indians in the State of Minnesota" to defray the expenses of the agencies maintained among the Chippewas in Minnesota by the United States be decreed unconstitutional null and void, and that said preliminary injunction be made perpetual.

(l) That upon preliminary hearing the defendants, Charles H. Burke, Commissioner of Indian Affairs, and Albert Bacon Fall, Secretary of the Interior, be enjoined and restrained (as set out in paragraph 13 of this bill) pending the final determination of this cause from using or expending any of the trust funds standing to the credit of the Chippewa Indians in the State of Minnesota, or which have been withdrawn from said funds, in defraying the expenses of the removal of the agency from White Earth to Cass Lake, Minnesota, or for the maintenance of said agency at Cass Lake, or for the rental or alteration of any building at Cass Lake for agency purposes; that upon final hearing said preliminary injunction be made perpetual.

(*m*) Plaintiffs also pray for such other and further relief as to the Court may seem just and proper and the exigencies of the case may require.

JOHN G. MORRISON, JR.,
Plaintiff.

WEBSTER BALLINGER,
Attorney for Plaintiffs.

62 STATE OF MINNESOTA,
County of Beltrami, ss:

John G. Morrison, Jr., being by me first duly sworn according to law deposed and said, that he has read the above and foregoing Bill by him subscribed and knows the contents thereof; that the matters and things therein stated of his own personal knowledge he knows to be true, and that those matters and things stated upon information and belief he believes to be true.

JOHN G. MORRISON, JR.

Subscribed and sworn to before me this 13" day of June, A. D., 1922.

OMAR R. GRAVELLE, [SEAL.]
Notary Public, State of Minnesota.

My Commission expires Feb. 15/29.

Decree Dismissing Bill as Amended.

Filed June 20, 1922.

* * * * * * *

This cause having come on to be heard on the motions of the defendants to dismiss the original bill of complaint herein filed, and the said motions having been sustained by the court with leave to plaintiff to amend his bill of complaint; and the plaintiff thereafter having filed his amended bill of complaint pursuant to the leave so granted, and the defendants having elected to have the motion to dismiss aforesaid stand to the bill of complaint so amended: now on the submission thereof, it having been considered by the
63 court that the motion to dismiss the bill of complaint so amended should be granted, and the plaintiff having in open court elected to plead no further and the court being fully advised in the premises, it is, this 20th day of June 1922,

Ordered, adjudged, and decreed that the amended bill of complaint herein filed be and the same hereby is dismissed, and that defendants have and recover their reasonable costs against the plaintiff, said costs to be taxed by the clerk.

By the court:

A. A. HOEHLING,
Justice.

And from the foregoing decree the plaintiff in open court on the day last above written notes an appeal to the Court of Appeals of the District of Columbia and the same is hereby allowed; the penal sum of the bond for costs on appeal being hereby fixed at One Hundred ($100) Dollars, with leave in lieu thereof to deposit in cash with the clerk of the court the sum of Fifty ($50) Dollars.

By the court:

A. A. HOEHLING,
Justice.

Memorandum.

June 26, 1922.—Undertaking on appeal approved and filed.

64 *Assignment of Errors.*

Filed June 26, 1922.

* * * * * * *

The Court erred in the following particulars:

1. In holding that the plaintiff has no such interest as entitles him to maintain the suit.
2. In holding that there is defect of parties complainant.
3. In holding that there is defect of parties defendant, in that the State of Minnesota is an indispensable party to so much of the suit as involves swamp and overflowed lands.
4. In holding that plaintiff is not representative of the rights, titles, moneys, and property of the Red Lake Indians, and which latter cannot be litigated and judicially determined in their absence.
5. In holding that the bill embracese diverse questions political in their nature, in respect to which relief must be obtained, if at all, from Congress.
6. In holding that the suit is essentially against the United States, which is the substantial and real party in interest, and that the United States has not waived, in any manner, its immunity from suit, or consented to be sued.
7. In holding that the bill does not set out any facts sufficient to enable the complainant to the relief prayed for or to any relief.
8. In holding that the Court is without jurisdiction over the subject matter of the suit.
9. In sustaining the motions to dismiss and in dismissing the bill.

WEBSTER BALLINGER,
Attorney for Plaintiffs.

65 *Designation of Record.*

Filed June 26, 1922.

* * * * * * *

The Clerk of the Court will please transcribe and certify as the record on appeal in the above entitled cause the following:

1. Notation of the filing of the original bill.
2. The motion of defendants Fall, Burke and Spry to dismiss.
3. Notation that a motion to dismiss identical as to the grounds assigned in the above motion was filed by defendant Andrew W. Mellon.
4. The memorandum decision of the Court.
5. Order sustaining the motion to dismiss the original bill.
6. Amended bill of complaint.

7. Decree dismissing amended bill and notice of appeal.
8. Notation of the bond filed.
9. Assignment of errors.
10. This designation of the record.

WEBSTER BALLINGER,
Attorney for Plaintiffs.

Service of copy of the above and foregoing designation of the record accepted this 23d day of June, 1922.

C. EDWARD WRIGHT,
Attorney for Defendants Fall et al.
VERNON E. WEST,
Attorney for Defendant Mellon.

66 *Memoranda.*

August 2, 1922.—Order extending time to file transcript of record to and including the 1st day of September, 1922, filed.
August 30, 1922.—Order extending time to file transcript of record to and including the 15th day of September, 1922, filed.

67 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Morgan H. Beach, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 66, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 40034 in Equity, wherein John G. Morrison, Jr., et al. are Plaintiffs and Albert Bacon Fall, Secretary of the Interior, et al., are Defendants, as the same remains upon the files and of record in said Court.
In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 31st day of August, 1922.

[Seal of Supreme Court of the District of Columbia.]

MORGAN H. BEACH,
Clerk,
By W. E. WILLIAMS,
Assistant Clerk.

L. M. G./E. W.

Endorsed on cover: District of Columbia Supreme Court. No. 3875. John G. Morrison, Jr., et al., appellants, vs. Albert Bacon Fall, &c., et al. Court of Appeals, District of Columbia. Filed Sep. 11, 1922. Henry W. Hodges, clerk.

IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

Thursday, February 15th, A. D. 1923.

* * * * * * *

[Title omitted]

ARGUMENT OF CAUSE

The argument in the above entitled cause was commenced by Mr. Webster Ballinger, attorney for the appellants, and was continued by Mr. C. E. Wright, attorney for the appellees, and was concluded by Mr. Webster Ballinger, attorney for the appellants. On motion the appellants are allowed to file additional authorities herein, with leave to appellees to reply if so advised.

MEMORANDUM

March 27, 1923.—Motion filed to substitute Hubert Work, Secretary of the Interior, for Albert Bacon Fall, retired, as a party appellee.

IN COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

Tuesday, March 27, A. D. 1923.

* * * * * * *

[Title omitted]

ORDER FOR SUBSTITUTION

The retirement of Albert Bacon Fall and the appointment of Hubert Work as Secretary of the Interior having been suggested. It is, on motion, ordered, that Hubert Work, Secretary of the Interior, is hereby made party appellee herein in the place of Albert Bacon Fall, retired.

IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

[Title omitted]

OPINION

Before Smyth, Chief Justice; Robb, Associate Justice, and Barber, Judge of the United States Court of Customs Appeals

SMYTH, Chief Justice:

John G. Morrison, Jr., describing himself as a member of that class of persons called "all the Chippewa Indians in the State of

Minnesota," filed a bill in the supreme court of the District of Columbia in behalf of himself and all other persons similarly situated, in which he asked for various kinds of relief against the Secretary of the Interior, Commissioner of the General Land Office, Commissioner of Indian Affairs, and the Secretary of the Treasury, concerning many subjects mentioned in the bill. The defendants moved to dismiss the bill on several grounds. The motion was sustained, and a decree dismissing the bill, the plaintiff having declined to amend, was entered. The bill is voluminous, and we will give only so much of it as is necessary to illustrate the points raised.

Under an act approved January 14, 1889 (25 Stat. 642), the different bands of Chippewa Indians of Minnesota ceded to the government their title in all their lands constituting their reservations in that State, except a small portion belonging to the White Earth and Red Lake bands. The lands were to be surveyed and classified into pine and agricultrual lands, and were to be sold at a price not less than that fixed in the Act, the proceeds to be deposited in the Treasury of the United States to the credit of the Chippewa Indians of Minnesota, to draw interest at the rate of five per cent. per annum for the period of fifty years. Part of the interest was to be paid annually in cash to heads of families and orphans for their use, part to other classes of Indians, and the remainder, one quarter, to be devoted exclusively, under the direction of the Secretary of the Interior, to the establishment and maintenance of free schools for the Indians. At the end of fifty years the permanent fund was to be divided and paid to the Indians in equal shares.

The first specific charge of misconduct upon the part of any of the defendants is that the Secretary of the Interior and the Commissioner of the General Land Office illegally caused about 900,000 acres of the ceded lands to be classified as swamp and overflowed lands, and issued patents to the State of Minnesota covering approximately 600,000 acres of those lands, without consideration to the Indians, and it is averred that unless restrained they will issue patents to the remaining lands so illegally classified. It is stated in the brief of the appellees, and not denied by the appellant, that the Secretary of the Interior in 1913 ordered that no more patents issue for these lands, and that none has issued since that time. Therefore, there is no cause for relief on that account. With respect to the 600,000 acres which it is said have been patented to the State of Minnesota, it is manifest that we have no power to pass upon the legality of that act in the absence of the State of Minnesota, which is not a party to the suit.

It is next complained that Congress by an act approved May 17, 1900 (31 Stat. 179), provided for homestead patents for agricultural public lands acquired prior to the passage of the Act, by treaty or agreement, from the various Indian tribes, including the Chippewas, without charge to the patentees except what was necessary to pay office fees; that none of the lands acquired from the Chippewa Indians were public lands within the meaning of the Act, and that notwithstanding this several thousand patents had been issued for the ceded lands without payment therefor being made into the trust

fund, as required by the act of 1889. We think the lands acquired from the Chippewa Indians under the act are public lands within the meaning of the act of 1900. The legal title to them is in the United States, and it has a right to dispose of them. By their disposition in the way provided for in the last-mentioned act the trust fund of the Indians does not suffer, for the act declares that the United States shall pay into the fund a sum of money equivalent to that which it would have received if the land had been sold at the price stated in the act of 1889. Thus the government becomes responsible for the price of the land as it is responsible for the trust fund.

It is argued, however, that the act of 1900 is invalid, since it worked a change in the method of disposing of the lands provided for in the act of 1889. This might be true if Morrison and those for whom he assumes to speak acquired any vested rights in the method. But they did not. A similar question was presented to the Supreme Court of the United States in Gritts v. Fisher, 224 U. S. 640, 648. An act of July 1, 1902, provided that certain tribal Indians and children of the tribe born before a certain date should be participants in the distribution of lands of the tribe to which they belonged. A later act cut down the amount which they would have received under the first act by providing for the admission of children born at a later date to participation in the distribution, and it was argued that Congress did not have the power to do this. Speaking of the rights of the plaintiffs under the first act the court said that it "did not confer upon them any vested right such as would disable Congress from thereafter making provision for admitting newly born members of the tribe to the allotment and distribution. The difficulty with the appellants' contention is that it treats the act of 1902 as a contract when 'it is only an act of Congress and can have no greater effect.' * * * It was but an exertion of the administrative control of the Government over the tribal property of tribal Indians, and was subject to change by Congress at any time before it was carried into effect and while the tribal relations continued." In support of its conclusion the court cites Stephens v. Cherokee Nation, 174 U. S. 445, 488; Cherokee Nation v. Hitchcock, 187 U. S. 294; Wallace v. Adams, 204 U. S. 415, 423; and Cherokee Intermarriage Cases, 203 U. S. 76, 93. See also Brader v. James, 246 U. S. 88, 94. This demonstrates that the act of 1900 is valid.

The bill calls attention to the fact that under the act of 1889 the timber on pine lands was to be appraised at not less than $3.00 per thousand feet, and the land and standing timber thereon were to be sold at public auction, in no event for less than their appraised value; that this method was changed by the act of June 27, 1902 (32 Stat. 400); and that under the act of May 23, 1908 (35 Stat. 272), 400,000 acres of the best pine lands were included in the Minnesota Forest Reserve. Plaintiff asks that so much of the acts of June 27, 1902 and May 23, 1908 as directs the sale of the lands in a manner different from that provided for in the act of 1889 be declared unconstitutional. For the reason given in the Gritts case and the other

cases just cited, the request must be denied. In addition it should be observed that the validity of the act of June 27, 1902, was under consideration by the Supreme Court of the United States in Naganab v. Hitchcock, 202 U. S. 473, wherein it was said that it was apparent that the suit, while in form against the Secretary of the Interior, was in effect against the United States to control the disposition of the lands and for an accounting of the proceeds of the sales thereof, and for that reason it could not be maintained, the United States not having given its consent to be sued. It is true that in that suit there was present the element of accounting, but we do not think that makes any difference in view of the court's reasoning.

Morrison avers at length that a large number of Chippewa Indians, members of the Red Lake Band, have been deprived of certain rights through the action of the defendants. But he, according to the bill, is not a member of the Red Lake Band, and he has shown no authority to speak for them. At the bar it was stated by counsel for defendants, and not denied by his opponent that the Red Lake Band did not desire the relief which Morrison sought for them, and that they were at that time represented in court, though not on the record, by an attorney, for the purpose of assisting defendants in the position which they were defending. In view of this we do not think that Morrison has any standing to insist that the Red Lake Band shall have something which they do not want.

In one part of the bill it is charged that some $500,000 derived from timber cut on the Red Lake Indian Forest were deposited in the Treasury of the United States to the credit of the Red Lake Band, and not to the credit of the Chippewa Indians in Minnesota, as provided in the agreement of 1889. If so, the credit can not be changed in a suit of this kind to which the Red Lake Band are not parties.

An attack is leveled against certain contracts which the Secretary of the Interior has made with mission boarding schools for the education of Indian children, and which call for the disbursement of money to pay for the tuition and maintenance of the children out of the trust fund, and Morrison asks that the Secretary and the Commissioner of Indian Affairs be enjoined from approving any warrant drawn for the purpose of discharging the obligations imposed by these contracts, and that they be restrained from entering into any like contracts in the future. He also asks for similar relief with respect to contracts made by the same officials with the public school authorities of Minnesota for the education of Indian children. Neither those who represent the mission or the public schools are before the court, and we have no power to determine their rights without according them a hearing. Moreover, the act of 1889 specifically enjoins upon the Secretary of the Interior the duty of spending a certain part of the interest derived from the fund for the establishment and maintenance of a system of free schools for the children.

Congress by the acts of March 3, 1921, and May 24, 1922, made certain provisions for the withdrawal of money from the trust fund to be used for promoting civilization and self-support among the

Indians in connection with certain Indian agencies. The Commissioner of Indian Affairs directed the removal of the agency at White Earth to the Town of Cass Lake, Minnesota. It is urged that the acts of Congress are void, and that the removal of the agency was without authority. In Lane v. Morrison, 246 U. S. 214, the court approved an appropriation made for just such purposes out of the trust fund. It is said by counsel for Morrison that the only question involved in that case was whether or not the joint resolution there considered made the appropriation, and that there was no contention as to the power of Congress in the matter. That is true. It seems that all parties, including the court, regarded the resolution as a valid exertion of congressional authority. The court points out that Congress had been accustomed to make such appropriations for many years subsequent to the act of 1889 creating the trust fund, and implicitly treats the appropriation as valid. The agenices exist for the benefit of the Indians, and it was proper that the government, their guardian, in the administration of the trust fund, should pay the expense of maintaining them.

The agency was removed from White Earth to Cass Lake by the President, acting through the Commissioner, under authority of section 2059, R. S. That Congress had the power to authorize the President to determine where an Indian agency should be located must be conceded. Authorities for such a proposition are not necessary.

The bill proceeds upon the premise that the act of 1889, under which lands were conveyed to the government for certain purposes, constituted a contract between the Indians and the government, whereby the former acquired a vested right in the methods of handling the trust provided in the act. If this were true and the proper parties were before the court, a conclusion different from that which we have reached might be necessary, but according to the Gritts and other decisions which we have referred to it is not. The act is not a contract. Congress as the guardian of the tribal Indians may change its methods of handling their funds whenever in its judgment the welfare of the Indians requires that it should be done.

Having examined all the points raised by the bill, and being satisfied that no error was committed by the trial court, we affirm its decree, with costs.

Constantine J. Smyth, Chief Justice.

Monday, June 4th, A. D. 1923.

* * * * * * *

[Title omitted]

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

DECREE

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia and was argued by counsel. On consideration whereof, It is now here ordered, adjudged and decreed by this Court that the decree of the said Supreme Court in this cause be and the same is hereby affirmed with costs.

Per Mr. Chief Justice Smyth, June 4, 1923.

Judge Orion M. Barber of the U. S. Court of Customs Appeals sat in this case in the place of Justice Van Orsdel.

IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

[Title omitted]

MOTION FOR ALLOWANCE OF APPEAL—Filed June 12, 1923

Come now the appellants in the above entitled cause, and respectfully show that on or about June 4, 1923, this court entered a decree therein in favor of appellees and against appellants, affirming the decree of the Supreme Court of the District of Columbia in favor of appellants, in which decree of this court certain errors were committed to the prejudice of appellants.

Appellants further show that the decree of this court in this cause is subject to review by the Supreme Court of the United States for the following reasons:

1. That an appeal lies under paragraph 1 of section 250 of the Judicial Code, being the act of March 3, 1911 (36 Stat., 1087, 1159), in that the appellees assailed the jurisdiction of the court, which was sustained by the trial court which held that the matters presented by the Bill were political in their nature and unreviewable by the court and a decree entered thereon, which decree was affirmed by this court.

2. That an appeal lies under paragraph 3 of section 250 of said Code, in that the application of the constitution of the United States to the rights claimed by the appellants, and the constitutionality of laws of Congress, are involved.

3. That an appeal lies under paragraph 5 of section 250 of said Code, in that the validity of the authority exercised by appellees as

officers of the United States, as well as the existence or scope of their powers and duties as such officers, are drawn in question.

Wherefore, appellants pray the allowance of an appeal to the Supreme Court of the United States for the correction of the errors complained of, that a bond in the sum of three hundred dollars to operate as a supercedeas be fixed, and that the mandate of this court be stayed until further order.

John G. Morrison, Jr., et al., Appellants. Webster Ballinger, Attorney for Appellants.

[File endorsement omitted.]

Tuesday, June 19th, A. D. 1923.

* * * * * * *

[Title omitted]

ORDER ALLOWING APPEAL

On consideration of the motion for the allowance of an appeal to the Supreme Court of the United States in the above entitled cause, It is ordered by the Court that said appeal be and the same is hereby allowed, and the bond to act as supersedeas is fixed at the sum of three hundred dollars.

IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

[Title omitted]

ASSIGNMENT OF ERRORS—Filed June 27, 1923

The Court erred in the following particulars:

1. In holding that the agreements entered into pursuant to the authority contained in the act of January 14, 1889, did not constitute a contract between the Indians and the Government.

2. In holding that appellants have no vested interest in the property in suit.

3. In holding that the terms and conditions recited in said agreements for the disposition of the property ceded by the Indians, and the use of the proceeds received therefrom, were subject to change and alteration by Congress at its will.

4. In holding that there was defect of parties complainant.

5. In holding that there was defect of parties defendant.

6. In holding that the suit is essentially against the United States which has not consented to be sued.

7. In holding that the court had no jurisdiction over the subject matter in suit.

8. In holding that there was no taking of property in violation of the rights of appellants and without due process of law.

9. In holding that a mere statement appearing in the brief of appellees unsupported by anything in the record, and not denied in the brief filed by appellants, that the further issuance of patents to the swamp lands had been suspended in 1913, precluded any relief being afforded appellants under the sixth paragraph of the bill.

10. In holding that the lands conveyed by the Indians under the agreements entered into pursuant to the act of January 14, 1889, were public lands within the meaning of the act of May 17, 1900, that the issuance of patents before the receipt of the purchase price is lawful and proper; that the disposition being made by appellees of said lands under said act results in no loss to the Indians, and that appellants are entitled to no relief under paragraph 7 of the bill.

11. In holding that the disposition of the ceded lands classified as pine lands, not at their market value as provided in the agreements, but at the arbitrary price of $1.25 per acre as authorized in the acts of June 27, 1902, and May 23, 1908, is valid; that said congressional enactments are constitutional, and that appellants are entitled to no relief under paragraphs 8 and 9 of the bill.

12. In holding that appellants are not entitled to the enforcement of the agreements and the acts of Congress requiring allotments to be made to the Indians on the Red Lake Reservation, and entitled to no relief under paragraph 10-a of the bill.

13. In holding that notwithstanding under the agreements the members of the Red Lake Band of Indians were entitled to only individual allotments of 80 acres each on the Red Lake Reservation, the remaining property on said reservation passing under the terms of the trust to be sold and disposed of as therein provided, and the net proceeds received therefrom placed in the trust fund to the credit of all the Chippewa Indians in the State of Minnesota, it was within the power of Congress to pass the act of February 20, 1904, changing the agreements so as to confer the ownership of all the property on the Red Lake Reservation exclusively upon the members of the Red Lake Band to the exclusion of all the other Indians entitled to share therein under the agreements; that the said act of 1904 was a valid enactment and that appellants are entitled to no relief under paragraph 10-b of the bill.

14. In holding that notwithstanding under the terms of the agreements all net funds received from the sale and disposition of the timber on the ceded lands were to be placed in the trust fund to the credit of all the Chippewa Indians in the State of Minnesota, it was within the power of Congress to pass the act of May 18, 1916, creating the Red Lake Forest Reserve and diverting the funds received

from the timber cut therefrom from the fund standing to the credit of "all the Chippewa Indians in the State of Minnesota" to a new fund created for the exclusive benefit of the members of the Red Lake Band; that said act of 1916 was valid and that appellants are entitled to no relief under paragraph 10-c of the bill.

15. In holding that notwithstanding by the agreements one-fourth of the interest annually accruing on the principal trust fund was, under the direction of appellee, Secretary of the Interior, to be "devoted exclusively to the establishment and maintenance of a system of free-schools among said Indians in their midst and for their benefit" it was and is lawful for appellee, Secretary of the Interior, to enter into contracts with two sectarian mission schools, that form no part of any system of free schools among the Indians, and over which appellees have no jurisdiction nor control, for the maintenance and education of about 220 of the more than 4,000 Indian children entitled to receive educational benefits from the fund, eighty per cent of those contratced for being taken from the public schools where they were or are regularly in free attendance pursuant to State law, at an expense to the Indians of approximately two-fifths of the entire available school fund, and so depleting the Indian school fund that approximately 3,800 Indian children are deprived of their just proportion thereof and many of them are deprived of any school facilities whatsoever; that the existing contracts cannot be interfered with by decree of the court as the mission school authorities were not made parties defendant and are not before the court, that the continued execution of said contracts is lawful and that appellants are entitled to no relief under paragraph 11-a of the bill.

16. In holding that the use of $46,570 of the trust fund of the Indians authorized by act of Congress to be used in the discretion of appellee, Secretary of the Interior, in the payment of tuition of Indian children attending the public schools of Minnesota, whose tuition is free and whose attendance is made compulsory under State law, the expenditure being a pure gratuity to the State which its officers are unauthorized to receive under State law, is not a violation of the terms of the agreements creating the said trust fund, is lawful and that appellants are entitled to no relief under paragraph 11-b of the bill.

17. In holding that the use of $45,000 out of the principal trust fund of the Indians authorized by act of Congress to be used by appellee, Secretary of the Interior, in his discretion, in defraying the expenses of agencies maintained by the United States among the Chippewas is not in violation of the agreements creating said trust fund, the act of Congress being constitutional, the expenditure lawful, and that appellants are entitled to no relief under paragraph 12-a of the bill.

18. In holding that the use of $42,500 out of the principal trust fund of the Indians authorized by act of Congress to be used by appellee, Secretary of the Interior, in his discretion, in defraying the

expenses of the agencies maintained by the United States among the Chippewas is not a violation of the agreements creating said trust fund, the act of Congress being constitutional, the expenditure lawful, and that appellants are entitled to no relief under paragraph 12-b of the bill.

19. In holding that the use of the trust fund of the Indians in defraying the expenses of the removal of the United States Agency from White Earth to Cass Lake, Minnesota, and its equipment and maintenance there, together with the equipment and maintenance of quarters for its employees, is not in violation of the agreements under which the trust fund was created and is being held, is lawful, and that appellants are entitled to no relief under paragraph 13 of the bill.

20. In affirming the decree of the trial court and dismissing the bill.

Webster Ballinger, Attorney for Appellants.

[File endorsement omitted.]

BOND ON APPEAL—Filed and approved July 3, 1923; for $300.00; omitted in printing

[File endorsement omitted.]

CITATION AND SERVICE—Filed July 3, 1923; omitted in printing

Service acknowledged July 3, 1923.

C. Edward Wright, Counsel for Appellees.

[File endorsement omitted.]

IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

[Title omitted]

DESIGNATION OF RECORD—Filed July 3, 1923

The Clerk of the Court will please include and certify theretor as the record on appeal in the above entitled cause, the following:

1. Record as certified to this court.

2. Opinion of court.

3. Motion for allowance of appeal, stay of mandate and fixing supersedeas bond.

4. Order allowing motion, staying mandate, and fixing supersedeas bond.

5. Notation of bond filed and approved.

6. Notation of citation to appellees and service.

7. Assignment of errors.

8. This designation.

Webster Ballinger, Attorney for Appellants.

Service of copy of the above and foregoing designation of the record accepted this 28th day of June, 1923.

C. Edward Wright, Attorney for Appellees. Peyton Gordon, Attorney for Appellees Secretary of the Treasury Mellon.

[File endorsement omitted.]

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

CLERK'S CERTIFICATE

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from 1 to 62, inclusive, constitute a true copy of the transcript of record and proceedings of said Court of Appeals in the case of John G. Morrison, Jr., et al., Appellants, vs. Hubert Work, Secretary of the Interior; Charles H. Burke, Commissioner of Indian Affairs; William Spry, Commissioner of the General Land Office, et al., No. 3875, April Term, 1923, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this 3rd day of July, A. D. 1923.

Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia. [Seal of Court of Appeals, District of Columbia.]

Endorsed on cover: File No. 29,729. District of Columbia Court of Appeals. Term No. 419. John G. Morrison, Jr., et al., appellants, vs. Hubert Work, Secretary of the Interior; Charles H. Burke, Commissioner of Indian Affairs; William Spry, Commissioner of the General Land Office, et al. Filed July 7th, 1923. File No. 29,729.